

## **WELCOME TO THE ETHICS COMMISSION MEETING**

*Please sign in at the testimony table.*

*As a courtesy, please silence your cell phone.*



Date: May 17, 2017  
Time: 11:30 a.m.  
Place: Kapālama Hale  
925 Dillingham Boulevard  
1<sup>st</sup> Floor Conference Room

### **II.A. CHAIR'S REPORT**

1. Announcements, Introductions, and Correspondence
  - Presentation of Award of Recognition -  
Commr. Stephen Silva (2012–2016)



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## II.A. CHAIR'S REPORT

### 1. Announcements, Introductions, and Correspondence

- **Introduction of New Commissioners** (terms exp. Dec. 31, 2021)
  - Cmmr. David Monk
  - Cmmr. Lynette Lo Kanda



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3

## II.A. CHAIR'S REPORT

### 2. For Action: Approval of Open Session Minutes of April 19, 2017

### 3. For Action: Approval of Executive Session Minutes of April 19, 2017

*[exec/session if needed, HRS §92-5(a)(4)]*



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4

## II.A. CHAIR'S REPORT

### 4. Guest Presentation

- Office of Information Practices (OIP) – Training
  - Sunshine Law (HRS Chapter 92)
  - Uniform Information Practices Act (UIPA) (HRS Chapter 92F)



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5

ETHICS COMMISSION  
MEETING  
II.B. EDLC REPORT



Kapālama Hale  
May 17, 2017

## II.B.1. STAFF WORK REPORTS – HIGHLIGHTS LEGAL CLERK III

- Work with ASO/COR to obtain PDs, misc. forms; process requests for personal services contracts, training; ongoing pCard admin
- Processed intake for cases, requests for advice, litigation docs, all meeting materials, guidances
- Coordinating Mindflash training, conf. room use
- Attending online training



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7

## II.B.1. STAFF WORK REPORTS – HIGHLIGHTS LEGAL CLERK I

- Compiled, graphed EC statistics
- Debriefed lobbyist, financial disclosure processes
- Updating, redesigning, refreshing website content; coordinating with Po`okela Fellow
- Managing Mindflash training, working w/ DIT to develop City ethics training app
- Assisting with investigations, case management



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8



## II.B.1. STAFF WORK REPORTS – HIGHLIGHTS

### Po`okela Fellow

- Compiling AO information
- Updating, redesigning, refreshing website
- Debriefed lobbyist filings

### MPA Intern

- Attending Strategic Planning PIG meetings



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9

## II.B.1. STAFF WORK REPORTS – HIGHLIGHTS INVESTIGATOR

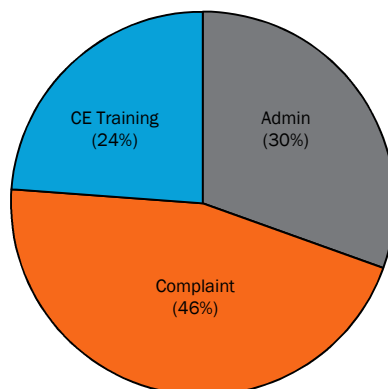
- Attending internal investigator training; online Dbase training
- Managing case load
- Developing triage/intake, case management process, process flowcharts, procedures
- Researching Dbases for case management



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10

### II.B.1. STAFF WORK REPORTS SUMMARY INVESTIGATOR



### II.B.1. STAFF WORK REPORTS – HIGHLIGHTS ASSOCIATE LEGAL COUNSEL

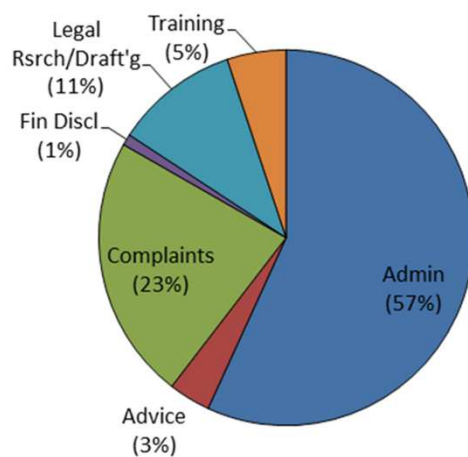
- Provided ethics training for new emp'ees, new HFD captains & battalion chiefs (FY17 total – 551)
- Managing DIT ethics training application development
- Managing cases, requests for advice
- Developing case management processes
- Handling ongoing admin responsibilities; attending online training



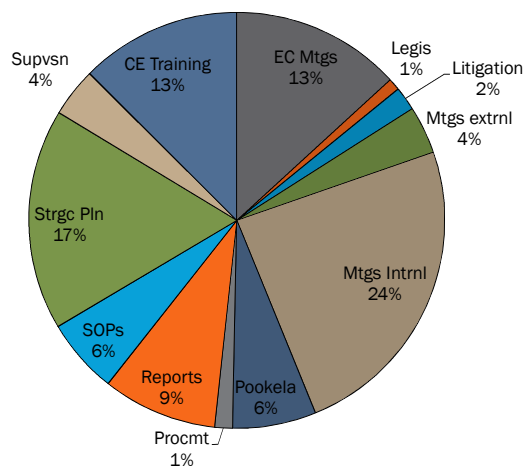
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12

## II.B.1. STAFF WORK REPORTS SUMMARY ASSOCIATE LEGAL COUNSEL

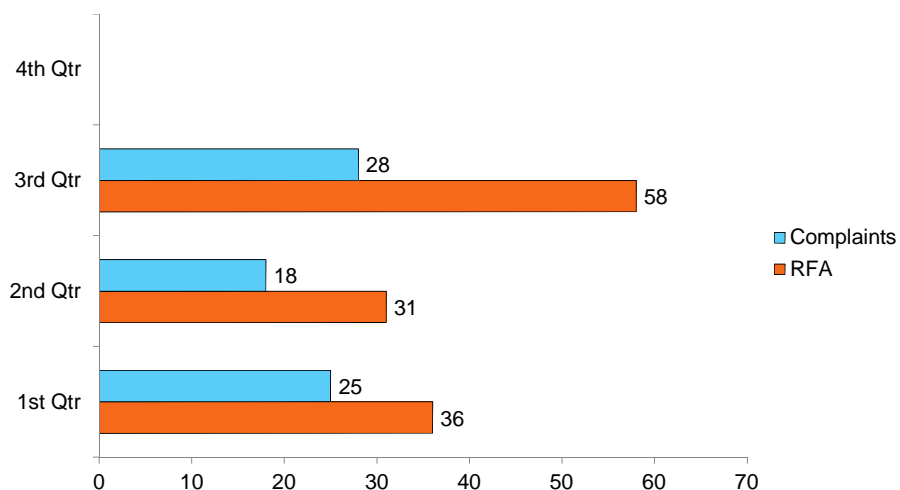


## II.B.1. STAFF WORK REPORTS SUMMARY ALC ADMINISTRATIVE TIME – DETAIL



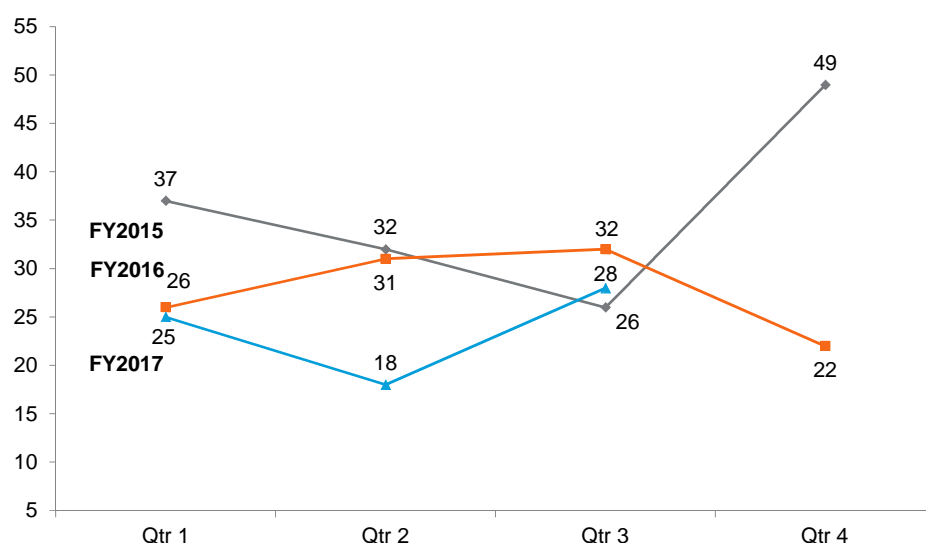
## II.B.2. STATISTICS

### COMPLAINTS AND REQUESTS FOR ADVICE, FY2017 (by quarter)



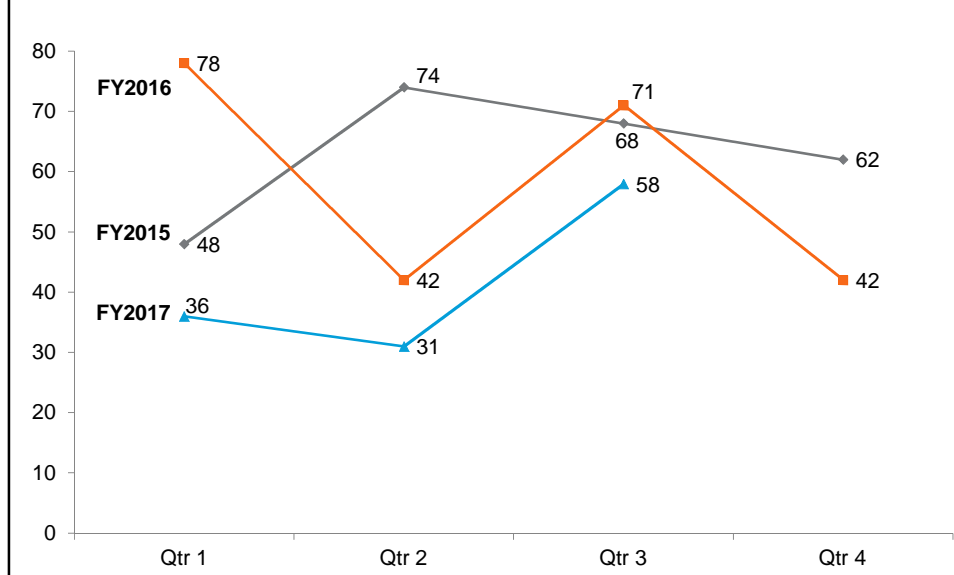
## II.B.2. STATISTICS

### COMPLAINTS, FY2015 - FY2017



## II.B.2. STATISTICS

### REQUESTS FOR ADVICE, FY2015 – FY2017



## II.B.4. ETHICS TRAINING PROGRAM

- Launched board/comm pilot program:
  - ✓ Liquor Commission (2/4)
  - ✓ Ethics Commission (6/7)
- June 2017
  - ✓ Launch Council, Cabinet pilot program
  - ✓ HPD Community Policing Div. training request
- Holding 1 seat for HART Interim Director



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18

## II.B.5. CHARTER AMENDMENT QUES. NO. 2

- Discussed draft bill with COR
- Bill amended per COR feedback
- Bill resubmitted to COR; review completed
- Ready to submit to MD's and Mayor's Office for introduction



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19

## II.B.7.a. LEGISLATION – UPDATE STATE ETHICS BILLS

- HB508 HD1 SD1 CD1 – *Relating to Ethics*  
(fine increases, settlement agreement)
- HB511 HD1 SD1 CD1 – *Relating to Lobbyists*  
(lobbying, enforcement)
- HB852 HD2 SD1 CD1 – *Relating to Ethics*  
(financial disclosure, administrative fines)



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20

## II.B.7.b. and c. LEGISLATION – UPDATE SUNSHINE LAW, INFORMATION PRACTICES BILLS

- HB165 HD1 SD2 CD1– *Relating to Public Meetings* (meeting docs available to public; notice requirements)
- SB572 SD1 HD1 CD1– *Relating to Information Practices* (OIP may adopt admin rules for protection of records, other)



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21

## II.B.7.d. LEGISLATION – UPDATE CITY COUNCIL BILL

- Bill 078 (2015) – *Relating to Sponsorships* (obtain sponsorships for city facilities, parks, programs, to optimize non-property tax revenue sources)



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22

## II.B.8. REPORT – MEETING WITH CAPI

- Center for Advancement of Public Integrity (CAPI), Executive Director Jennifer Rodgers

[End – EDLC Report]



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23

## II.C. RULE-MAKING AND ADMINISTRATIVE DIRECTIVES MANUAL

- Rule-Making – Chapter 91, HRS
- Administrative Directives Manual
  - Mayor Directives, Memoranda, and Department Policies and Circulars
 

“... policy guidance must pertain to all ... executive agencies and require continuing compliance until rescinded or superseded.”



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24



## II.D. and E. PROCEDURES

- EDLC - evaluate work performance  
*[exec/session if needed HRS §92-5(a)(2)]*
- EDLC, ALC - set salaries (RCH § 11-107, as amended by 2016 General Election Charter Amendment Ques. No. 2)  
*[exec/session if needed HRS §92-5(a)(2)]*



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25

## III. EXECUTIVE SESSION

- A. Procedural issues re: reconsideration of staff's preliminary determination of April 19, 2017 EC meeting agenda item III.A.:
- "whether officer knew or should have known that officer's alleged partisan advocacy for Charter Amendment on the Nov 8, 2016, ballot violated RCH § 11-104"

*[Confer w/ attys, HRS § 92-5(a)(4)]*



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26

### III. EXECUTIVE SESSION

#### B. Kealoha v. Totto

*[Confer w/ attys, HRS § 92-5(a)(4)]*



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27

### IV. STRATEGIC PLANNING

- Permitted Interaction Group Report – April 24, 2017 meeting



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28

## V. ADJOURNMENT

Honolulu Ethics Commission  
Kapālama Hale  
925 Dillingham Boulevard, Suite 190  
Honolulu, Hawai`i 96817  
Ph: (808) 768-7787  
Website: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics) Email: [ethics@honolulu.gov](mailto:ethics@honolulu.gov)

~MAHALO~



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END

**Agenda Item II.A.1.b.i.,  
Page 1  
[Reso No. 17-78 -  
Comm. Monk Appointmemt]**

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

**RESOLUTION 17-78**

Introduced: 03/08/17 By: RON MENOR – BY REQUEST Committee: PUBLIC HEARING,  
EXECUTIVE MATTERS  
AND LEGAL AFFAIRS

Title: RESOLUTION RELATING TO THE APPOINTMENT OF DAVID B. MONK TO SERVE ON THE ETHICS  
COMMISSION OF THE CITY AND COUNTY OF HONOLULU.

Voting Legend: \* = Aye w/Reservations

03/11/17	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
03/22/17	COUNCIL/PUBLIC HEARING	PUBLIC HEARING CLOSED AND RESOLUTION REFERRED TO COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
04/04/17	EXECUTIVE MATTERS AND LEGAL AFFAIRS	CR-112 - RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
04/26/17	COUNCIL	CR-112 AND RESOLUTION 17-78 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
\_\_\_\_\_  
GLEN T. TAKAHASHI, CITY CLERK

  
\_\_\_\_\_  
RON MENOR, CHAIR AND PRESIDING OFFICER



## RESOLUTION

RELATING TO THE APPOINTMENT OF **DAVID B. MONK** TO SERVE ON THE ETHICS COMMISSION OF THE CITY AND COUNTY OF HONOLULU.

WHEREAS, Section 11-107 of the Revised Charter of the City and County of Honolulu, 1973 ("Charter"), as amended, establishes an Ethics Commission ("Commission") comprised of seven members appointed by the Mayor and confirmed by the Council to five-year terms; and

WHEREAS, the Commission has the basic duties of rendering advisory opinions and conducting investigations concerning the application of the standards of ethical conduct of the City and recommending appropriate disciplinary action against city officers and employees who violate the standards; and

WHEREAS, Section 11-107 of the Charter prohibits members of the Commission from taking an active part in political management or in political campaigns; and

WHEREAS, Section 13-103 of the Charter requires a Commission member to be a registered voter of the City; and

WHEREAS, by Mayor's message, dated March 8, 2017, the Mayor has appointed Mr. David B. Monk to the Commission; and

WHEREAS, if confirmed by the Council, Mr. Monk will succeed **Mr. Stanford Yuen** whose term expired on December 31, 2016, and serve a term expiring on December 31, 2021; and

WHEREAS, the Council has reviewed Mr. Monk's qualifications and character and finds that Mr. Monk qualifies to serve on the Commission; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that this body confirms the appointment of **Mr. David B. Monk** to the Ethics Commission for a term expiring on **December 31, 2021**; and

BE IT FURTHER RESOLVED that the Council expresses its gratitude and appreciation to Mr. Monk for his willingness to be considered for public service and actively participate in city government; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

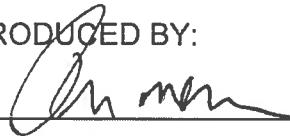
No. 17-78

## RESOLUTION

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BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, Chair of the Ethics Commission, and David B. Monk.

INTRODUCED BY:

 (br)

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DATE OF INTRODUCTION:

**MAR - 8 2017**

Honolulu, Hawaii

Councilmembers

**Agenda Item II.A.1.b.ii.,  
Page 1  
[Reso No. 17-102 -  
Comm. Kanda Appointment]**





## RESOLUTION

RELATING TO THE APPOINTMENT OF **LYNETTE LO KANDA** TO SERVE ON THE ETHICS COMMISSION OF THE CITY AND COUNTY OF HONOLULU.

WHEREAS, Section 11-107 of the Revised Charter of the City and County of Honolulu, 1973 ("Charter"), as amended, establishes an Ethics Commission ("Commission") comprised of seven members appointed by the Mayor and confirmed by the Council to five-year terms; and

WHEREAS, the Commission has the basic duties of rendering advisory opinions and conducting investigations concerning the application of the standards of ethical conduct of the City and recommending appropriate disciplinary action against city officers and employees who violate the standards; and

WHEREAS, Section 11-107 of the Charter prohibits members of the Commission from taking an active part in political management or in political campaigns; and

WHEREAS, Section 13-103 of the Charter requires a Commission member to be a registered voter of the City; and

WHEREAS, by Mayor's message, dated April 12, 2017, the Mayor has appointed Ms. Lynette Lo Kanda (a.k.a. Lynette Lo Tom) to the Commission; and

WHEREAS, if confirmed by the Council, Ms. Kanda will succeed Mr. Stephen Silva whose term expired on December 31, 2016, and serve a term expiring on December 31, 2021; and

WHEREAS, the Council has reviewed Ms. Kanda's qualifications and character and finds that Ms. Kanda qualifies to serve on the Commission; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that this body confirms the appointment of Ms. Lynette Lo Kanda to the Ethics Commission for a term expiring on December 31, 2021; and

BE IT FURTHER RESOLVED that the Council expresses its gratitude and appreciation to Ms. Kanda for her willingness to be considered for public service and actively participate in city government; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 17-102

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**RESOLUTION**

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BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, Chair of the Ethics Commission, and Lynette Lo Kanda.

INTRODUCED BY:

(br)

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DATE OF INTRODUCTION:

**APR 12 2017**

Honolulu, Hawaii

Councilmembers

**Agenda Item II.B.7.a.i.,  
Page 2  
[HB508 HD1 SD1 CD1]**

# HB508 HD1 SD1 CD1

Measure Title: RELATING TO ETHICS.  
 Report Title: Government; Ethics; Fine Increases; Settlement Agreement  
 Description: Increases the maximum administrative fines for ethics violations. Clarifies the assessment of fines in the context of a settlement agreement. (HB508 CD1)  
 Companion:  
 Package: None  
 Current Referral: JDL  
 Introducer(s): NISHIMOTO

<u>Sort by</u> <u>Date</u>	<u>Status</u>	<u>Text</u>
1/20/2017	H	Pending introduction.
1/23/2017	H	Pass First Reading
1/25/2017	H	Referred to JUD, FIN, referral sheet 3
2/7/2017	H	Bill scheduled to be heard by JUD on Thursday, 02-09-17 2:00PM in House conference room 325.
2/9/2017	H	The committees on JUD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 9 Ayes: Representative(s) Nishimoto, San Buenaventura, Brower, Johanson, C. Lee, Nakashima, Oshiro, McDermott, Thielen; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Belatti, Morikawa.
2/17/2017	H	Reported from JUD (Stand. Com. Rep. No. 531) as amended in HD 1, recommending passage on Second Reading and referral to FIN.
2/17/2017	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on FIN with none voting aye with reservations; none voting no (0) and Representative(s) DeCoite, Tokioka excused (2).
2/27/2017	H	Bill scheduled to be heard by FIN on Wednesday, 03-01-17 2:30PM in House conference room 308.
3/1/2017	H	The committees on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 15 Ayes: Representative(s) Luke, Cullen, Cachola, Choy, DeCoite, Gates, Keohokalole, Kobayashi, LoPresti, Lowen, Nakamura, Tokioka, Quinlan, Yamashita, Ward; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Holt, Tupola.
3/3/2017	H	Reported from FIN (Stand. Com. Rep. No. 935), recommending passage on Third Reading.
3/3/2017	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Ichiyama, McDermott excused (2). Transmitted to Senate.
3/7/2017	S	Received from House (Hse. Com. No. 104).
3/7/2017	S	Passed First Reading.
3/9/2017	S	Referred to JDL, WAM.
3/13/2017	S	Re-Referred to JDL.
3/13/2017	S	The committee(s) on JDL has scheduled a public hearing on 03-17-17 9:00AM in conference room 016.
3/17/2017	S	The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 4 Aye(s): Senator(s) Keith-Agaran, K. Rhoads, Kim, L. Thielen; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Gabbard.
4/4/2017	S	Reported from JDL (Stand. Com. Rep. No. 1293) with recommendation of passage on Second Reading, as amended (SD 1) and placement on the calendar for Third Reading.
4/4/2017	S	Report adopted; Passed Second Reading, as amended (SD 1).
4/4/2017	S	48 Hrs. Notice 04-06-17.
4/6/2017	S	Passed Third Reading, as amended (SD 1). Ayes, 24; Aye(s) with reservations: none . Noes, 0 (none). Excused, 1 (Senator(s) English). Transmitted to House.
4/6/2017	H	Returned from Senate (Sen. Com. No. 492) in amended form (SD 1).
4/7/2017	H	House disagrees with Senate amendment(s).

4/11/2017	S	Received notice of disagreement (Hse. Com. No. 545).
4/17/2017	H	House Conferees Appointed: Nishimoto, Cullen Co-Chairs; McDermott.
4/17/2017	S	Received notice of appointment of House conferees (Hse. Com. No. 586).
4/18/2017	S	Senate Conferees Appointed: Keith-Agaran Chair; Gabbard, Kim.
4/18/2017	H	Received notice of Senate conferees (Sen. Com. No. 680).
4/24/2017	H	Bill scheduled for Conference Committee Meeting on Tuesday, 04-25-17 10:00AM in conference room 325.
4/25/2017	H	Conference Committee Meeting will reconvene on Wednesday 04-26-17 2:00PM in conference room 325.
4/26/2017	H	Conference Committee Meeting will reconvene on Thursday 04-27-17 10:30AM in conference room 325.
4/27/2017	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 2 Ayes: Representative(s) Nishimoto, Cullen; Ayes with reservations: none; 0 Noes: none; and 1 Excused: Representative(s) McDermott.
4/27/2017	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 2 Aye(s): Senator(s) Keith-Agaran, Gabbard; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Kim.
4/28/2017	H	Reported from Conference Committee (Conf Com. Rep. No. 148) as amended in (CD 1).
4/28/2017	H	Forty-eight (48) hours notice Tuesday, 05-02-17.
4/28/2017	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 148).
4/28/2017	S	48 Hrs. Notice (as amended CD 1) 05-02-17.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## HB508 HD1 SD1 CD1

## A BILL FOR AN ACT

RELATING TO ETHICS.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 84-39, Hawaii Revised Statutes, is amended to read as follows:

"~~[§] 84-39 [§]~~ Administrative fines. (a) Where an administrative fine has not been established for a violation of ~~[a provision of]~~ this chapter, any person, including a legislator or employee, who violates ~~[a provision of]~~ this chapter shall be subject to an administrative fine imposed by the state ethics commission that shall not exceed ~~[\$500]~~ \$1,000 for each violation. All fines collected under this section shall be deposited in the general fund.

(b) No fine shall be assessed under this section unless:

(1) The state ethics commission convenes a hearing in accordance with section 84-31(c) and chapter 91~~[,]~~ and ~~[-2-]~~ A] a decision has been rendered by the commission~~[-]~~;  
or

(2) The state ethics commission and respondent agree to resolve any charge of an alleged violation prior to completion of the contested case process and the



1           resolution includes payment of an administrative fine  
2           or restitution, or both."

3           SECTION 2. This Act does not affect rights and duties that  
4           matured, penalties that were incurred, and proceedings that were  
5           begun before its effective date.

6           SECTION 3. Statutory material to be repealed is bracketed  
7           and stricken. New statutory material is underscored.

8           SECTION 4. This Act shall take effect upon its approval.



H.B. NO. 508  
H.D. 1  
S.D. 1  
C.D. 1

**Report Title:**

Government; Ethics; Fine Increases; Settlement Agreement

**Description:**

Increases the maximum administrative fines for ethics violations. Clarifies the assessment of fines in the context of a settlement agreement. (HB508 CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

HB508 CD1 HMS 2017-3755





**Agenda Item II.B.7.a.ii.,  
Page 2  
[HB511 HD1 SD1 CD1]**

# HB511 HD1 SD1 CD1

Measure Title: RELATING TO LOBBYISTS.

Report Title: State Ethics Commission; Lobbyist Law; Lobbying; Enforcement

Description: Clarifies the laws governing lobbyists by amending the definitions of "expenditure," "lobbyist," and "lobbying." Allows a former employer of a lobbyist to file a notice of termination of employment. Amends requirements for expenditure reports covering special sessions of the legislature. Requires the posting of lobbyist registration statements on the state ethics commission's website within a reasonable time after filing and the posting shall remain on the website for at least four years. Increases the maximum administrative fine from \$500 to \$1,000 for each violation of the lobbying law. (HB511 CD1)

Companion: [sb853](#)

Package: None

Current Referral: JDL

Introducer(s): NISHIMOTO

<u>Sort by</u> <u>Date</u>		Status Text
1/20/2017	H	Pending introduction.
1/23/2017	H	Pass First Reading
1/25/2017	H	Referred to JUD, referral sheet 3
2/7/2017	H	Bill scheduled to be heard by JUD on Thursday, 02-09-17 2:00PM in House conference room 325.
2/9/2017	H	The committee(s) on JUD recommend(s) that the measure be deferred.
2/21/2017	H	Bill scheduled for decision-making on Thursday, 02-23-17 2:00PM in House conference room 325.
2/23/2017	H	The committees on JUD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 11 Ayes: Representative(s) Nishimoto, San Buenaventura, Belatti, Brower, Johanson, C. Lee, Morikawa, Nakashima, Oshiro, McDermott, Thielen; Ayes with reservations: none; Noes: none; and Excused: none.
3/2/2017	H	Reported from JUD (Stand. Com. Rep. No. 804) as amended in HD 1, recommending passage on Second Reading and placement on the calendar for Third Reading.
3/2/2017	H	Passed Second Reading as amended in HD 1; placed on the calendar for Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Ichiyama excused (1).
3/7/2017	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Ichiyama excused (1). Transmitted to Senate.
3/9/2017	S	Received from House (Hse. Com. No. 268).
3/9/2017	S	Passed First Reading.
3/9/2017	S	Referred to JDL.
3/13/2017	S	The committee(s) on JDL has scheduled a public hearing on 03-17-17 9:00AM in conference room 016.
3/17/2017	S	The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 4 Aye(s): Senator(s) Keith-Agaran, K. Rhoads, Kim, L. Thielen; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Gabbard.
4/4/2017	S	Reported from JDL (Stand. Com. Rep. No. 1294) with recommendation of passage on Second Reading, as amended (SD 1) and placement on the calendar for Third Reading.
4/4/2017	S	Report adopted; Passed Second Reading, as amended (SD 1).
4/4/2017	S	48 Hrs. Notice 04-06-17.
4/6/2017	S	Passed Third Reading, as amended (SD 1). Ayes, 24; Aye(s) with reservations: none . Noes, 0 (none). Excused, 1 (Senator(s) English). Transmitted to House.
4/6/2017	H	Returned from Senate (Sen. Com. No. 493) in amended form (SD 1).
4/7/2017	H	House disagrees with Senate amendment (s).
4/11/2017	S	Received notice of disagreement (Hse. Com. No. 547).

4/17/2017	H	House Conferees Appointed: Nishimoto Chair; Oshiro, McDermott.
4/17/2017	S	Received notice of appointment of House conferees (Hse. Com. No. 586).
4/18/2017	S	Senate Conferees Appointed: Keith-Agaran Chair; Kim, K. Rhoads.
4/18/2017	H	Received notice of Senate conferees (Sen. Com. No. 680).
4/24/2017	H	Bill scheduled for Conference Committee Meeting on Tuesday, 04-25-17 10:00AM in conference room 325.
4/25/2017	H	Conference Committee Meeting will reconvene on Wednesday 04-26-17 2:00PM in conference room 325.
4/26/2017	H	Conference Committee Meeting will reconvene on Thursday 04-27-17 10:30AM in conference room 325.
4/27/2017	H	Conference Committee Meeting will reconvene on Thursday, 04-27-17 at 4:00PM in Conference Room 325.
4/27/2017	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 3 Ayes: Representative(s) Nishimoto, Oshiro, McDermott; Ayes with reservations: none; 0 Noes: none; and 0 Excused: none.
4/27/2017	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 3 Aye(s): Senator(s) Keith-Agaran, Kim, K. Rhoads; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
4/27/2017	H	Reported from Conference Committee (Conf Com. Rep. No. 81) as amended in (CD 1).
4/27/2017	H	Forty-eight (48) hours notice Tuesday, 05-02-17.
4/27/2017	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 81).
4/27/2017	S	48 Hrs. Notice (as amended CD 1) 05-02-17.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## HB511 HD1 SD1 CD1

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## A BILL FOR AN ACT

---

RELATING TO LOBBYISTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that Hawaii's lobbyist  
2 registration law is both under- and over-inclusive, such that  
3 amending the definitions of "expenditure", "lobbying", and  
4 "lobbyist" is necessary to provide additional transparency to  
5 the public while relieving some individuals, particularly  
6 certain representatives of charitable, nonprofit organizations,  
7 from having to register as lobbyists. Similarly, the  
8 legislature finds that several provisions of the lobbyists law  
9 should be amended to avoid unnecessary paperwork and confusion.  
10 Among other things, the legislature finds that the employer of a  
11 lobbyist should have the authority to terminate that lobbyist's  
12 registration if the lobbyist does not do so.

13       Accordingly, the purpose of this Act is to provide  
14 additional clarity and consistency in the administration and  
15 enforcement of Hawaii's lobbying laws.

16       SECTION 2. Section 97-1, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "§97-1 Definitions. When used in this chapter:



1       ~~[-(1)-]~~ "Administrative action" means the proposal, drafting,  
2       consideration, amendment, enactment, or defeat by any  
3       administrative agency of any rule~~[-, regulation,]~~ or other action  
4       governed by section 91-3.

5       ~~[-(2)-]~~ "Administrative agency" means a commission, board,  
6       agency, or other body, or official in the state government that  
7       is not a part of the legislative or judicial branch.

8       ~~[-(3)-]~~ "Contribution" includes a gift, subscription,  
9       forgiveness of a loan, advance, or deposit of money, or anything  
10      of value and includes a contract, promise, or agreement, whether  
11      or not enforceable, to make a contribution.

12      ~~[-(4)-]~~ "Expenditure" includes a payment, distribution,  
13      forgiveness of a loan, advance, deposit, or gift of money, or  
14      anything of value and includes a contract, promise, or  
15      agreement, whether or not enforceable, to make an expenditure.  
16      "Expenditure" also includes compensation or other consideration  
17      paid to a lobbyist for the performance of lobbying services.  
18      "Expenditure" excludes ~~[the expenses of preparing written~~  
19      ~~testimony and exhibits for a hearing before the legislature or~~  
20      ~~an administrative agency.]~~ any amounts expended:



1        (1) For intrastate travel costs, including incidental  
2        meals and lodging; provided that this exception does  
3        not apply to any amounts expended for the travel costs  
4        of state legislators, board and commission members, or  
5        any other employees of the State; or

6        (2) By a nonprofit organization to prepare and submit an  
7        application for a grant pursuant to chapter 42F, and  
8        for each of the nonprofit organization's employees to  
9        lobby a maximum of ten hours in a month for that  
10       application.

11       [~~45~~] "Legislative action" means the sponsorship, drafting,  
12       introduction, consideration, modification, enactment, or defeat  
13       of any bill, resolution, amendment, report, nomination,  
14       appointment, or any other matter pending or proposed in the  
15       legislature.

16       "Lobbying" means communicating directly or through an  
17       agent, or soliciting others to communicate, with any official in  
18       the legislative or executive branch, for the purpose of  
19       attempting to influence legislative or administrative action or  
20       a ballot issue. "Lobbying" shall not include the preparation



1 and submission of a grant application pursuant to chapter 42F by  
2 a representative of a nonprofit organization.

3 ~~[+6+]~~ "Lobbyist" means any individual who ~~[for]~~:

4 (1) Receives or expects to receive, either by employment  
5 or contract, \$1,000 or more in monetary or in-kind  
6 compensation in any calendar year for engaging in  
7 lobbying, either personally or through the lobbyist's  
8 agents; or

9 (2) For pay or other consideration ~~[engages]~~, on behalf of  
10 another person:

11 (A) Engages in lobbying in excess of five hours in  
12 any month of any reporting period described in  
13 section 97-3 ~~[or spends more than \$750]~~;

14 (B) Engages in lobbying in excess of ten hours during  
15 any calendar year; or

16 (C) Makes expenditures of \$1,000 or more of the  
17 person's or any other person's money lobbying  
18 during any reporting period described in section  
19 97-3 ~~[or]~~;

20 provided that an employee of a nonprofit organization who spends  
21 fewer than ten hours in any month lobbying on a grant



1 application submitted pursuant to chapter 42F is not a lobbyist  
2 if the employee does not engage in lobbying on matters that are  
3 unrelated to the grant application.

4 ~~[(7) "Lobbying" means communicating directly or through an~~  
5 ~~agent, or soliciting others to communicate, with any~~  
6 ~~official in the legislative or executive branch, for~~  
7 ~~the purpose of attempting to influence legislative or~~  
8 ~~administrative action or a ballot issue.~~

9 ~~(8)]~~ "Person" means a corporation, individual, union,  
10 association, firm, sole proprietorship, partnership, committee,  
11 club, or any other organization or a representative of a group  
12 of persons acting in concert."

13 SECTION 3. Section 97-2, Hawaii Revised Statutes, is  
14 amended by amending subsections (d) and (e) to read as follows:

15 "(d) A lobbyist shall file a notice of termination within  
16 ten days after the lobbyist ceases the activity ~~[which]~~ that  
17 required the lobbyist's registration. If the lobbyist fails to  
18 file a notice of termination, the person who employed or  
19 contracted for the services of the lobbyist may file the notice.  
20 The lobbyist and the ~~[employer]~~ person who employed or  
21 contracted for the services of the lobbyist shall remain





1 subject, however, to the requirements of this chapter [97] for  
2 the period during which the registration was effective.

3 (e) This chapter shall not apply to:

4 (1) Any individual who represents oneself and not any  
5 other person before the legislature or administrative  
6 agency; provided that [~~such~~] the individual [~~must~~  
7 ~~nonetheless~~] shall file a statement of expenditures if  
8 the individual meets any of the provisions of section  
9 97-3(a);

10 (2) Any federal, state, or county official or employee  
11 acting in the official's or employee's official  
12 capacity, unless the federal, state or county  
13 official, or employee contracts for the services of a  
14 lobbyist;

15 (3) Any elected public official acting in the public  
16 official's official capacity, unless the public  
17 official contracts for the services of a lobbyist;

18 (4) Any newspaper or other regularly published periodical  
19 or radio or television station [~~+~~], including any  
20 individual who owns, publishes, or is employed by a  
21 newspaper or periodical or radio or television



1 station[+], while publishing in the regular course of  
2 business news items, editorials, or other comments, or  
3 paid advertisements, which directly or indirectly urge  
4 the passage or defeat of legislative or administrative  
5 action;

6 (5) Any attorney who advises the attorney's clients on the  
7 construction or effect of proposed legislative or  
8 administrative action; provided that such attorney  
9 ~~[must nonetheless]~~ shall register if the attorney  
10 meets ~~[any of the provisions of section 97-1(6);]~~ the  
11 definition of "lobbyist" as defined in section 97-1;  
12 and

13 (6) Any person who possesses special skills and knowledge  
14 relevant to certain areas of legislation, whose skills  
15 and knowledge may be helpful to the legislative and  
16 executive branches of state government, and who makes  
17 an occasional appearance at the request of the  
18 legislature or an administrative agency, or the  
19 lobbyist even though receiving reimbursement or other  
20 payment from the legislature or administrative agency  
21 or the lobbyist for the appearance."



SECTION 4. Section 97-3, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) The following persons shall file a statement of expenditures with the state ethics commission on March 31, May 31, and January 31 of each year and within thirty days after adjournment sine die of any special session of the legislature:

(1) Each lobbyist;

(2) Each person who ~~[spends \$750]~~ makes expenditures of \$1,000 or more of the person's or any other person's money in any [six-month period] reporting period described in this section for the purpose of ~~[attempting to influence legislative or administrative action or a ballot issue by communicating or urging others to communicate with public officials; provided that any amounts expended for travel costs, including incidental meals and lodging, shall not be included in the tallying of the \$750;]~~ lobbying; and

(3) Each person who employs or contracts for the services of one or more lobbyists, whether independently or jointly with other persons. If the person is an



1 industry, trade, or professional association, only the  
2 association is the employer of the lobbyist.

3 (b) The March 31 report shall cover the period from  
4 January 1 through the last day of February. The May 31 report  
5 shall cover the period from March 1 through April 30. The  
6 January 31 report shall cover the period from May 1 through  
7 December 31 of the previous year. The report to be filed within  
8 thirty days after adjournment sine die of a special session of  
9 the legislature shall ~~cover~~;

10 (1) Cover the period from May 1 through adjournment sine  
11 die of that special session ~~[and shall apply]~~;

12 (2) Be filed only by persons listed in subsection (a) who  
13 engage in lobbying activities, or who make  
14 expenditures for the purpose of attempting to  
15 influence legislative action considered during a  
16 special session; and

17 (3) Apply to and include only those expenditures and  
18 contributions that relate to legislative action  
19 considered during that special session~~[-]~~;



1 provided that those expenditures and contributions included in  
2 the report need not be included by the person filing the report  
3 in any subsequent statement of expenditures.

4 (c) The statement shall contain the following information:

5 (1) The name and address of each person with respect to  
6 whom expenditures for the purpose of lobbying in the  
7 total sum of \$25 or more per day was made by the  
8 person filing the statement during the statement  
9 period and the amount or value of ~~[such]~~ the  
10 expenditure;

11 (2) The name and address of each person with respect to  
12 whom expenditures for the purpose of lobbying in the  
13 aggregate of \$150 or more was made by the person  
14 filing the statement during the statement period and  
15 the amount or value of ~~[such]~~ the expenditures;

16 (3) The total sum or value of all expenditures for the  
17 purpose of lobbying made by the person filing the  
18 statement during the statement ~~[period in excess of~~  
19 ~~\$750 during the statement]~~ period; provided that the  
20 sum or value of each expenditure is itemized in the  
21 following categories, as applicable:



- 1 (A) Preparation and distribution of lobbying  
2 materials;
- 3 (B) Media advertising;
- 4 (C) Compensation paid to lobbyists;
- 5 (D) Fees paid to consultants [~~or~~] for services;
- 6 (E) Entertainment and events;
- 7 (F) Receptions, meals, food, and beverages;
- 8 (G) Gifts;
- 9 (H) Loans; [~~and~~]
- 10 (I) Interstate transportation, including incidental  
11 meals and lodging; and
- 12 [~~(I)~~] (J) Other disbursements;
- 13 (4) The name and address of each person making  
14 contributions to the person filing the statement for  
15 the purpose of lobbying in the total sum of \$25 or  
16 more during the statement period and the amount or  
17 value of [~~such~~] the contributions; and
- 18 (5) The subject area of the legislative and administrative  
19 action [~~which~~] that was supported or opposed by the  
20 person filing the statement during the statement  
21 period."



SECTION 5. Section 97-4.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[f]§97-4.5[f] Lobbyist list. [As soon as is feasible after the commencement of each regular session of the legislature, the state ethics commission shall publish a list of registered lobbyists, the names of the persons whom they represent, and other pertinent information but shall not include in such list the addresses of the lobbyists. The list shall be supplemented from time to time as may be necessary.]~~ All lobbyist registration statements shall be posted on the state ethics commission's website within a reasonable time after filing, and may be removed from the website after four years."

SECTION 6. Section 97-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person who:

- (1) Wilfully fails to file any statement or report required by this chapter;
- (2) Wilfully files a statement or report containing false information or material omission of any fact;
- (3) Engages in activities prohibited by section 97-5; or



1 (4) Fails to provide information required by section 97-2  
2 or 97-3;  
3 shall be subject to an administrative fine imposed by the state  
4 ethics commission that shall not exceed [~~\$500~~] \$1,000 for each  
5 violation of this chapter. All fines collected under this  
6 section shall be deposited into the general fund."

7 SECTION 7. The state ethics commission, in its discretion,  
8 may make any changes that it deems necessary to internal  
9 procedures or forms to aid in the implementation of this Act.

10 SECTION 8. If any provision of this Act, or the  
11 application thereof to any person or circumstance, is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act that can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

16 SECTION 9. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19 SECTION 10. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 11. This Act shall take effect upon its approval.





**Report Title:**

State Ethics Commission; Lobbyist Law; Lobbying; Enforcement

**Description:**

Clarifies the laws governing lobbyists by amending the definitions of "expenditure," "lobbyist," and "lobbying." Allows a former employer of a lobbyist to file a notice of termination of employment. Amends requirements for expenditure reports covering special sessions of the legislature. Requires the posting of lobbyist registration statements on the state ethics commission's website within a reasonable time after filing and the posting shall remain on the website for at least four years. Increases the maximum administrative fine from \$500 to \$1,000 for each violation of the lobbying law. (HB511 CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

HB511 CD1 HMS 2017-3810



**Agenda Item II.B.7.a.iii.,  
Page 2  
[HB852 HD2 SD1 CD1]**

# HB852 HD2 SD1 CD1

Measure Title: RELATING TO ETHICS.

Report Title: State Ethics Commission; Financial Disclosure Statements; Notice; Administrative Fine

Description: Authorizes the state ethics commission to post on its website for public inspection, the names of legislators, delegates to the constitutional convention, or certain employees who fail to file their financial disclosure statements by the statutory deadline. Allows the state ethics commission to use in-person service, electronic mail, or first-class mail to notify legislators, delegates to the constitutional convention, or certain employees who fail to timely file their financial disclosure statements. Increases the administrative fine and late penalty fee for failure to timely file financial disclosure statements. (HB852 CD1)

Companion:

Package: None

Current Referral: JDL

Introducer(s): NISHIMOTO

<u>Sort by Date</u>	<u>Status Text</u>
1/23/2017	H Pending introduction.
1/25/2017	H Pass First Reading
1/27/2017	H Referred to LAB, JUD, referral sheet 4
2/3/2017	H Bill scheduled to be heard by LAB on Tuesday, 02-07-17 11:00AM in House conference room 309.
2/7/2017	H The committees on LAB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 6 Ayes: Representative(s) Johanson, Holt, Keohokalole, Nakashima, Yamashita, Matsumoto; Ayes with reservations: none; Noes: none; and 1 Excused: Representative(s) Takumi.
2/17/2017	H Reported from LAB (Stand. Com. Rep. No. 491) as amended in HD 1, recommending passage on Second Reading and referral to JUD.
2/17/2017	H Passed Second Reading as amended in HD 1 and referred to the committee(s) on JUD with none voting aye with reservations; none voting no (0) and Representative(s) DeCoite, Tokioka excused (2).
2/24/2017	H Bill scheduled to be heard by JUD on Tuesday, 02-28-17 2:00PM in House conference room 325.
2/28/2017	H The committees on JUD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 10 Ayes: Representative(s) Nishimoto, San Buenaventura, Belatti, Brower, Johanson, C. Lee, Morikawa, Nakashima, Oshiro, Thielen; Ayes with reservations: none; Noes: none; and 1 Excused: Representative(s) McDermott.
3/3/2017	H Reported from JUD (Stand. Com. Rep. No. 1044) as amended in HD 2, recommending passage on Third Reading.
3/3/2017	H Forty-eight (48) hours notice Tuesday, 03-07-17.
3/7/2017	H Passed Third Reading as amended in HD 2 with none voting aye with reservations; none voting no (0) and Representative(s) Ichiyama excused (1). Transmitted to Senate.
3/9/2017	S Received from House (Hse. Com. No. 298).
3/9/2017	S Passed First Reading.
3/9/2017	S Referred to JDL.
3/13/2017	S The committee(s) on JDL has scheduled a public hearing on 03-17-17 9:00AM in conference room 016.
3/17/2017	S The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 4 Aye(s): Senator(s) Keith-Agaran, K. Rhoads, Kim, L. Thielen; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Gabbard.
4/4/2017	S Reported from JDL (Stand. Com. Rep. No. 1295) with recommendation of passage on Second Reading, as amended (SD 1) and placement on the calendar for Third Reading.
4/4/2017	S Report adopted; Passed Second Reading, as amended (SD 1).
4/4/2017	S 48 Hrs. Notice 04-06-17.

4/6/2017	S	Passed Third Reading, as amended (SD 1). Ayes, 24; Aye(s) with reservations: none . Noes, 0 (none). Excused, 1 (Senator(s) English). Transmitted to House.
4/6/2017	H	Returned from Senate (Sen. Com. No. 501) in amended form (SD 1).
4/7/2017	H	House disagrees with Senate amendment (s).
4/11/2017	S	Received notice of disagreement (Hse. Com. No. 545).
4/17/2017	H	House Conferees Appointed: Johanson, Nishimoto Co-Chairs; Nakashima, Matsumoto.
4/17/2017	S	Received notice of appointment of House conferees (Hse. Com. No. 586).
4/18/2017	S	Senate Conferees Appointed: Keith-Agaran Chair; Kim, K. Rhoads.
4/18/2017	H	Received notice of Senate conferees (Sen. Com. No. 680).
4/19/2017	H	Bill scheduled for Conference Committee Meeting on Thursday, 04-20-17 1:45PM in conference room 325.
4/21/2017	H	Conference Committee Meeting will reconvene on Wednesday 04-26-17 1:45PM in conference room 325.
4/26/2017	H	Conference Committee Meeting will reconvene on Thursday 04-27-17 1:30PM in conference room 325.
4/27/2017	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 4 Ayes: Representative(s) Johanson, Nishimoto, Nakashima, Matsumoto; Ayes with reservations: none; 0 Noes: none; and 0 Excused: none.
4/27/2017	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 3 Aye(s): Senator(s) Keith-Agaran, Kim, K. Rhoads; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
4/27/2017	H	Reported from Conference Committee (Conf Com. Rep. No. 40) as amended in (CD 1).
4/27/2017	H	Forty-eight (48) hours notice Tuesday, 05-02-17.
4/27/2017	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 40).
4/27/2017	S	48 Hrs. Notice (as amended CD 1) 05-02-17.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## HB852 HD2 SD1 CD1

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## A BILL FOR AN ACT

---

RELATING TO ETHICS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 84-17, Hawaii Revised Statutes, is  
2 amended by amending subsections (i) and (j) to read as follows:  
3       "(i) Failure of a legislator, a delegate to the  
4 constitutional convention, or employee to file a disclosure of  
5 financial interests as required by this section shall be a  
6 violation of this chapter. Any legislator, delegate to a  
7 constitutional convention, or employee who fails to file a  
8 disclosure of financial interests when due shall be assessed an  
9 administrative fine of [~~\$50-~~] \$75. The state ethics commission,  
10 upon the expiration of the time allowed for filing, may post on  
11 its website for public inspection a list of all persons who have  
12 failed to file financial disclosure statements. The state  
13 ethics commission shall notify a person, by [~~registered mail,~~  
14 ~~return receipt requested,~~] in-person service, electronic mail to  
15 the person's state electronic mail address, or first class mail,  
16 of the failure to file, and the disclosure of financial  
17 interests shall be submitted to the state ethics commission not  
18 later than 4:30 p.m. on the tenth day after notification of the



1 failure to file has been mailed to the person. If a disclosure  
2 of financial interests has not been filed within ten days of the  
3 due date, an additional administrative fine of \$10 for each day  
4 a disclosure remains unfiled shall be added to the  
5 administrative fine. All administrative fines collected under  
6 this section shall be deposited in the State's general fund.  
7 Any administrative fine for late filing shall be in addition to  
8 any other action the state ethics commission may take under this  
9 chapter for violations of the state ethics code. The state  
10 ethics commission may waive any administrative fines assessed  
11 under this subsection for good cause shown.

12 (j) The chief election officer, upon receipt of the  
13 nomination paper of any person seeking a state elective office,  
14 including the office of delegate to the constitutional  
15 convention, shall notify the state ethics commission of the name  
16 of the candidate for state office and the date on which the  
17 person filed the nomination paper. The state ethics commission,  
18 upon the expiration of the time allowed for filing, shall  
19 release to the public a list of all candidates who have failed  
20 to file financial disclosure statements and shall immediately  
21 assess a late filing penalty fee against those candidates of



1    [~~\$25~~] \$50, which shall be collected by the state ethics  
2    commission and deposited into the general fund. The state  
3    ethics commission may investigate, initiate, or receive charges  
4    as to whether a candidate's financial disclosure statement  
5    discloses the financial interests required to be disclosed.  
6    After proceeding in conformance with section 84-31, the state  
7    ethics commission may issue a decision as to whether a candidate  
8    has complied with section 84-17(f) and this decision shall be a  
9    matter of public record."

10        SECTION 2. This Act does not affect rights and duties that  
11    matured, penalties that were incurred, and proceedings that were  
12    begun before its effective date.

13        SECTION 3. Statutory material to be repealed is bracketed  
14    and stricken. New statutory material is underscored.

15        SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

State Ethics Commission; Financial Disclosure Statements;  
Notice; Administrative Fine

**Description:**

Authorizes the state ethics commission to post on its website for public inspection, the names of legislators, delegates to the constitutional convention, or certain employees who fail to file their financial disclosure statements by the statutory deadline. Allows the state ethics commission to use in-person service, electronic mail, or first-class mail to notify legislators, delegates to the constitutional convention, or certain employees who fail to timely file their financial disclosure statements. Increases the administrative fine and late penalty fee for failure to timely file financial disclosure statements. (HB852 CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

HB852 CD1 HMS 2017-3713





**Agenda Item II.B.7.b.,  
Page 2  
[Sunshine Law – HB165 HD1  
SD2 CD1]**



DAVID Y. IGE  
GOVERNOR

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OFFICE OF INFORMATION PRACTICES**

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CHERYL KAKAZU PARK  
DIRECTOR

## **WHAT'S NEW: BILLS READY FOR FINAL PASSAGE**

**May 1, 2017**

April 28, 2017 was the deadline for all bills to be decked and ready for the final passage by the Legislature this week. The Office of Information Practices (OIP) is pleased to announce that two bills that significantly impact the Uniform Information Practices Act (UIPA) or the Sunshine Law have survived the legislative process and will be voted on this week.

### **Bill concerning both the UIPA and Sunshine Law:**

**HB 165, HD 1, SD 2, CD 1, Relating to Public Meetings:** After years of disagreement among stakeholders, the conference committee agreed to pass out the conference draft, which was proposed by OIP after gaining consensus from key stakeholders. In its final version, this bill essentially provides for the following:

(1) **Board packets for public inspection:** Boards must make board packets available for public inspection in the board's office at the time they are distributed to board members, to the extent that the documents are publicly disclosable under the UIPA. Disclosure is not required of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of non-public information in the time available before the public inspection required by the bill. Packets need not be mailed to requesters, but boards must accommodate requests for electronic access to the packet as soon as practicable.

(2) **Electronic notice of meetings:** Sunshine Law meeting notices must be posted on state and county electronic calendars, with copies to be provided for posting in a central location in paper or electronic format by the Lt. Governor's office for state boards and county clerks for county boards. Boards are still required to provide copies of the notice and agenda to the Lt. Governor's office or county clerk, but as the electronic calendar will provide the official notice required by the Sunshine Law, the failure to file timely copies of notices with the Lt. Governor's office or county clerks will not require cancellation of the meeting. At the same time

that the notice is electronically posted, boards must continue to send notices to requesters by postal mail, or electronically if so requested; as before, the Sunshine Law will continue to require cancellation of a meeting if a board fails to comply with this amended requirement to notify requesters.

**3) Meeting minutes may be kept in recorded form and must be posted online:** In lieu of written minutes, a board may now keep its minutes in a digital or analog recording format (e.g., via a tape recorder) and provide a written summary that shall include:

- a. the date, time, and place of the meeting;
- b. the members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
- c. a record, by individual members, of motions and votes made by the board; and
- d. a time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

Boards must post their written minutes, or minutes in recorded format with a written summary, on their website or an appropriate state or county website within forty days after the meeting.

To give boards and the posting bodies time to learn and implement the new requirements, the bill will take effect on July 1, 2018.

OIP would like to thank the conferees, Representatives Scott Nishimoto (co-chair and bill sponsor), Romy Cachola (co-chair), and Bob McDermott, and Senators Donna Kim (chair), and Gil Keith-Agaran and Breene Harimoto (co-chairs), and Russell Ruderman.

#### **UIPA bill:**

**SB 572, SD 1, HD 1, CD 1, Relating to Information Practices:** For uniformity and consistency, this bill amends section 92F-26, HRS, to allow OIP to adopt additional rules regarding the UIPA that agencies must follow. The bill will be effective on July 1, 2017.

OIP would like to thank the bill sponsors Senators Will Espero and Les Ihara, Jr., and the conferees, Senators Gil Keith-Agaran (chair), Donna Kim, and Karl Rhoads, and Representatives Scott Nishimoto (chair), Marcus Oshiro, and Bob McDermott.

Of the 108 bills that OIP was following, these are the two most significant bills that ultimately passed this session. The bills that did not pass will carry over to next year and could be acted upon next session. All bills and legislative committee reports can be found on the Legislature's website at [capitol.hawaii.org](http://capitol.hawaii.org).

For the latest open government news, you can check for archived copies of What's New articles, which are posted at [oip.hawaii.gov](http://oip.hawaii.gov) or can be e-mailed upon request by e-mailing [oip@hawaii.gov](mailto:oip@hawaii.gov). Also, if you would like to receive What's New articles or attachments in a different format, please e-mail or contact OIP at (808) 586-1400.

# HB165 HD1 SD2 CD1

Measure Title: RELATING TO PUBLIC MEETINGS.  
 Report Title: Sunshine Law; Public Agency Meetings and Records  
 Description: Requires state and county boards to make meeting documents available to the public. Clarifies notice requirements. Accounts for electronic documents and notices. (HB165 CD1)  
 Companion:  
 Package: None  
 Current Referral: JUD, FIN  
 Introducer(s): NISHIMOTO

<u>Sort by</u> <u>Date</u>	<u>Status</u>	<u>Text</u>
1/19/2017	H	Pending introduction.
1/20/2017	H	Pass First Reading
1/23/2017	H	Referred to JUD, referral sheet 1
2/22/2017	H	Bill scheduled to be heard by JUD on Friday, 02-24-17 2:00PM in House conference room 325.
2/24/2017	H	The committees on JUD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 11 Ayes: Representative(s) Nishimoto, San Buenaventura, Belatti, Brower, Johanson, C. Lee, Morikawa, Nakashima, Oshiro, McDermott, Thielen; Ayes with reservations: none; Noes: none; and Excused: none.
3/2/2017	H	Reported from JUD (Stand. Com. Rep. No. 790) as amended in HD 1, recommending passage on Second Reading and placement on the calendar for Third Reading.
3/2/2017	H	Passed Second Reading as amended in HD 1; placed on the calendar for Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Ichiyama excused (1).
3/7/2017	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Ichiyama excused (1). Transmitted to Senate.
3/9/2017	S	Received from House (Hse. Com. No. 227).
3/9/2017	S	Passed First Reading.
3/9/2017	S	Referred to GVO, JDL.
3/13/2017	S	The committee(s) on GVO has scheduled a public hearing on 03-16-17 2:50PM in conference room 224.
3/13/2017	S	Re-Referred to GVO, JDL/WAM.
3/16/2017	S	The committee(s) on GVO recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in GVO were as follows: 3 Aye(s): Senator(s) Kim, Ruderman, K. Rhoads; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Galuteria, Tokuda.
3/24/2017	S	Reported from GVO (Stand. Com. Rep. No. 1069) with recommendation of passage on Second Reading, as amended (SD 1) and referral to JDL/WAM.
3/24/2017	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to JDL/WAM.
3/24/2017	S	The committee(s) on JDL/WAM will hold a public decision making on 03-30-17 9:50AM in conference room 211.
3/30/2017	S	The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 5 Aye(s): Senator(s) Keith-Agaran, K. Rhoads, Gabbard, Kim, L. Thielen; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
3/30/2017	S	The committee(s) on WAM recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in WAM were as follows: 8 Aye(s): Senator(s) Tokuda, Dela Cruz, Galuteria, Harimoto, Inouye, Riviere, Taniguchi, Wakai; Aye(s) with reservations: none ; 0 No(es): none; and 3 Excused: Senator(s) English, K. Kahele, Shimabukuro.
4/7/2017	S	Reported from JDL/WAM (Stand. Com. Rep. No. 1487) with recommendation of passage on Third Reading, as amended (SD 2).
4/7/2017	S	48 Hrs. Notice 04-07-17

4/11/2017	S	Report adopted; Passed Third Reading, as amended (SD 2). Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
4/11/2017	H	Returned from Senate (Sen. Com. No. 550) in amended form (SD 2).
4/13/2017	H	House disagrees with Senate amendment (s).
4/17/2017	H	Re-referred to JUD, FIN, referral sheet 45
4/17/2017	H	House Conferees Appointed: Nishimoto, Cachola Co-Chairs; McDermott.
4/17/2017	S	Received notice of disagreement (Hse. Com. No. 585).
4/17/2017	S	Received notice of appointment of House conferees (Hse. Com. No. 586).
4/24/2017	S	Senate Conferees Appointed: Kim Chair; Keith-Agaran, Harimoto Co-Chairs; Ruderman.
4/24/2017	H	Received notice of Senate conferees (Sen. Com. No. 707).
4/26/2017	S	Conference committee meeting scheduled for 04-27-17 2:35PM in conference room 309.
4/27/2017	S	Conference committee meeting to reconvene on 04-28-17 3:15PM in conference room 309.
4/28/2017	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 2 Ayes: Representative(s) Nishimoto, Cachola; Ayes with reservations: none; 0 Noes: none; and 1 Excused: Representative(s) McDermott.
4/28/2017	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 4 Aye(s): Senator(s) Kim, Keith-Agaran, Harimoto, Ruderman; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
4/28/2017	H	Reported from Conference Committee (Conf Com. Rep. No. 161) as amended in (CD 1).
4/28/2017	H	Forty-eight (48) hours notice Tuesday, 05-02-17.
4/28/2017	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 161).
4/28/2017	S	48 Hrs. Notice (as amended CD 1) 05-02-17.
5/2/2017	S	Passed Final Reading, as amended (CD 1). 25 Aye(s); Aye(s) with reservations: none . 0 No(es): none. 0 Excused: none.
5/2/2017	H	Passed Final Reading as amended in CD 1 with none voting aye with reservations; none voting no (0) and none excused (0).
5/3/2017	H	Received notice of Final Reading (Sen. Com. No. 737).
5/4/2017	S	Received notice of passage on Final Reading in House (Hse. Com. No. 642).
5/3/2017	H	Transmitted to Governor.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## HB165 HD1 SD2 CD1

## A BILL FOR AN ACT

RELATING TO PUBLIC MEETINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 92, Hawaii Revised Statutes, is amended  
by adding a new section to be appropriately designated and to  
read as follows:

"§92- Board packet; filing; public inspection; notice.

At the time the board packet is distributed to the board  
members, the board shall also make the board packet available  
for public inspection in the board's office. The board shall  
provide notice to persons requesting notification of meetings  
pursuant to section 92-7(e) that the board packet is available  
for inspection in the board's office and shall provide  
reasonably prompt access to the board packet to any person upon  
request. The board is not required to mail board packets. As  
soon as practicable, the board shall accommodate requests for  
electronic access to the board packet.

For purposes of this section, "board packet" means  
documents that are compiled by the board and distributed to  
board members before a meeting for use at that meeting, to the  
extent the documents are public under chapter 92F; provided that



1 this section shall not require disclosure of executive session  
2 minutes, license applications, or other records for which the  
3 board cannot reasonably complete its redaction of nonpublic  
4 information in the time available before the public inspection  
5 required by this section."

6 SECTION 2. Section 92-7, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§92-7 Notice. (a) The board shall give written public  
9 notice of any regular, special, emergency, or rescheduled  
10 meeting, or any executive meeting when anticipated in advance.  
11 The notice shall include an agenda [~~which~~] that lists all of the  
12 items to be considered at the forthcoming meeting, the date,  
13 time, and place of the meeting, and in the case of an executive  
14 meeting, the purpose shall be stated. If an item to be  
15 considered is the proposed adoption, amendment, or repeal of  
16 administrative rules, an agenda meets the requirements for  
17 public notice pursuant to this section if it contains a  
18 statement on the topic of the proposed rules or a general  
19 description of the subjects involved, as described in section  
20 91-3(a)(1)(A), and a statement of when and where the proposed  
21 rules may be viewed in person and on the Internet as provided in





1 section 91-2.6. The means specified by this section shall be  
2 the only means required for giving notice under this part  
3 notwithstanding any law to the contrary.

4 (b) ~~[The board shall file the notice in the office of the~~  
5 ~~lieutenant governor or the appropriate county clerk's office,]~~

6 No less than six calendar days prior to the meeting, the board  
7 shall post the notice on an electronic calendar on a website  
8 maintained by the State or the appropriate county and in the  
9 board's office for public inspection[, at least six calendar  
10 days before the meeting]. The notice shall also be posted at  
11 the site of the meeting whenever feasible. The board shall  
12 provide a copy of the notice to the office of the lieutenant  
13 governor or the appropriate county clerk's office at the time  
14 the notice is posted, and the office of the lieutenant governor  
15 or the appropriate clerk's office shall post paper or electronic  
16 copies of all meeting notices in a central location in a public  
17 building; provided that a failure to do so by the board, the  
18 office of the lieutenant governor, or the appropriate county  
19 clerk's office shall not require cancellation of the meeting.

20 (c) If the written public notice is ~~[filed in the office~~  
21 ~~of the lieutenant governor or the appropriate county clerk's~~



1 ~~office]~~ electronically posted on an electronic calendar less  
2 than six calendar days before the meeting, the [lieutenant  
3 ~~governor or the appropriate county clerk shall immediately~~  
4 ~~notify the chairperson of the board, or the director of the~~  
5 ~~department within which the board is established or placed, of~~  
6 ~~the tardy filing of the meeting notice. The]~~ meeting shall be  
7 canceled as a matter of law~~[, the]~~ and shall not be held. The  
8 chairperson or the director shall ensure that a notice canceling  
9 the meeting is posted at the place of the meeting~~[, and no~~  
10 ~~meeting shall be held]~~. If there is a dispute as to whether a  
11 notice was timely posted on an electronic calendar maintained by  
12 the State or appropriate county, a printout of the electronic  
13 time-stamped agenda shall be conclusive evidence of the  
14 electronic posting date. The board shall provide a copy of the  
15 time-stamped record upon request.

16 (d) No board shall change the agenda, ~~[once filed,]~~ less  
17 than six calendar days prior to the meeting, by adding items  
18 thereto without a two-thirds recorded vote of all members to  
19 which the board is entitled; provided that no item shall be  
20 added to the agenda if it is of reasonably major importance and  
21 action thereon by the board will affect a significant number of



1 persons. Items of reasonably major importance not decided at a  
2 scheduled meeting shall be considered only at a meeting  
3 continued to a reasonable day and time.

4 (e) The board shall maintain a list of names and postal or  
5 electronic mail addresses of persons who request notification of  
6 meetings and shall mail or electronically mail a copy of the  
7 notice to ~~[such]~~ the persons by the means chosen by the persons  
8 at their last recorded postal or electronic mail address no  
9 later than the time the agenda is ~~[filed]~~ required to be  
10 electronically posted under subsection (b)."

11 SECTION 3. Section 92-8, Hawaii Revised Statutes, is  
12 amended by amending subsections (a) and (b) to read as follows:

13 "(a) If a board finds that an imminent peril to the public  
14 health, safety, or welfare requires a meeting in less time than  
15 is provided for in section 92-7, the board may hold an emergency  
16 meeting provided that:

17 (1) The board states in writing the reasons for its  
18 findings;

19 (2) Two-thirds of all members to which the board is  
20 entitled agree that the findings are correct and an  
21 emergency exists;



(3) An emergency agenda and the findings are [~~filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and~~] electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply; and

(4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

(1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the



1 attorney general concurs that the conditions necessary  
2 for an emergency meeting under this subsection exist;

3 (2) Two-thirds of all members to which the board is  
4 entitled agree that the conditions necessary for an  
5 emergency meeting under this subsection exist;

6 (3) The finding that an unanticipated event has occurred  
7 and that an emergency meeting is necessary and the  
8 agenda for the emergency meeting under this subsection  
9 are ~~[filed with the office of the lieutenant governor~~  
10 ~~or the appropriate county clerk's office, and in the~~  
11 ~~board's office,]~~ electronically posted pursuant to  
12 section 92-7(b); provided that the six calendar day  
13 requirement for filing and electronic posting shall  
14 not apply;

15 (4) Persons requesting notification on a regular basis are  
16 contacted by postal or electronic mail or telephone as  
17 soon as practicable; and

18 (5) The board limits its action to only that action  
19 ~~[which]~~ that must be taken on or before the date that  
20 a meeting would have been held, had the board noticed  
21 the meeting pursuant to section 92-7."



1 SECTION 4. Section 92-9, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§92-9 Minutes. (a) The board shall keep written or  
4 recorded minutes of all meetings. Unless otherwise required by  
5 law, neither a full transcript nor a recording of the meeting is  
6 required, but the ~~[written]~~ minutes shall give a true reflection  
7 of the matters discussed at the meeting and the views of the  
8 participants. ~~[The]~~ Written minutes shall include, but need not  
9 be limited to:

10 (1) The date, time and place of the meeting;

11 (2) The members of the board recorded as either present or  
12 absent;

13 (3) The substance of all matters proposed, discussed, or  
14 decided; and a record, by individual member, of any  
15 votes taken; and

16 (4) Any other information that any member of the board  
17 requests be included or reflected in the minutes.

18 (b) The minutes shall be ~~[public records and shall be~~  
19 ~~available]~~ made available to the public by posting on the  
20 board's website or, if the board does not have a website, on an  
21 appropriate state or county website within ~~[thirty]~~ forty days



1 after the meeting except where such disclosure would be  
2 inconsistent with section 92-5; provided that minutes of  
3 executive meetings may be withheld so long as their publication  
4 would defeat the lawful purpose of the executive meeting, but no  
5 longer. A written summary shall accompany any minutes that are  
6 posted in a digital or analog recording format and shall  
7 include:

8 (1) The date, time, and place of the meeting;

9 (2) The members of the board recorded as either present or  
10 absent, and the times when individual members entered  
11 or left the meeting;

12 (3) A record, by individual member, of motions and votes  
13 made by the board; and

14 (4) A time stamp or other reference indicating when in the  
15 recording the board began discussion of each agenda  
16 item and when motions and votes were made by the  
17 board.

18 (c) All or any part of a meeting of a board may be  
19 recorded by any person in attendance by ~~[means of a tape~~  
20 ~~recorder or any other]~~ any means of ~~[sonic]~~ reproduction, except  
21 when a meeting is closed pursuant to section 92-4; provided the



1 recording does not actively interfere with the conduct of the  
2 meeting."

3 SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2018.





# H.B. NO. 165 H.D. 1 S.D. 2 C.D. 1

**Report Title:**

Sunshine Law; Public Agency Meetings and Records

**Description:**

Requires state and county boards to make meeting documents available to the public. Clarifies notice requirements. Accounts for electronic documents and notices. (HB165 CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

HB165 CD1 HMS 2017-3819



**Agenda Item II.B.7.c.,  
Page 2  
[UIPA – SB572 SD1 HD1  
CD1]**

# SB572 SD1 HD1 CD1

Measure Title: RELATING TO INFORMATION PRACTICES.  
 Report Title: Office of Information Practices; Freedom of Information; Disclosure Rules  
 Description: Authorizes the Office of Information Practices to adopt administrative rules regarding protection of state and county agency records subject to disclosure and other rules necessary to administer the Uniform Information Practices Act. (CD1)  
 Companion:  
 Package: None  
 Current Referral: JUD  
 Introducer(s): ESPERO, IHARA, Gabbard, Keith-Agaran, Kim

<u>Sort by</u> <u>Date</u>	<u>Status</u>	<u>Text</u>
1/20/2017	S	Introduced.
1/23/2017	S	Passed First Reading.
1/23/2017	S	Referred to PSM, JDL.
2/16/2017	S	Re-Referred to JDL.
2/23/2017	S	The committee(s) on JDL has scheduled a public hearing on 02-27-17 9:30AM in conference room 016.
2/27/2017	S	The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 5 Aye(s): Senator(s) Keith-Agaran, K. Rhoads, Gabbard, Kim, L. Thielen; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
3/3/2017	S	Reported from JDL (Stand. Com. Rep. No. 707) with recommendation of passage on Second Reading, as amended (SD 1) and placement on the calendar for Third Reading.
3/3/2017	S	Report adopted; Passed Second Reading, as amended (SD 1).
3/3/2017	S	48 Hrs. Notice 03-07-17.
3/7/2017	S	Passed Third Reading, as amended (SD 1). Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
3/7/2017	H	Received from Senate (Sen. Com. No. 202) in amended form (SD 1).
3/9/2017	H	Pass First Reading
3/9/2017	H	Referred to JUD, referral sheet 27
3/13/2017	H	Bill scheduled to be heard by JUD on Wednesday, 03-15-17 2:00PM in House conference room 325.
3/15/2017	H	The committees on JUD recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 9 Ayes: Representative(s) Nishimoto, San Buenaventura, Brower, Johanson, C. Lee, Nakashima, Oshiro, McDermott, Thielen; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Belatti, Morikawa.
3/24/2017	H	Bill scheduled for decision making on Wednesday, 03-29-17 2:00PM in conference room 325.
3/29/2017	H	Reconsideration of action taken on 3/15/17.
3/29/2017	H	The votes in JUD were as follows: 9 Ayes: Representative(s) Nishimoto, San Buenaventura, Belatti, Brower, Johanson, C. Lee, Morikawa, Oshiro, Thielen; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Nakashima, McDermott.
3/29/2017	H	The committees on JUD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 9 Ayes: Representative(s) Nishimoto, San Buenaventura, Belatti, Brower, Johanson, C. Lee, Morikawa, Oshiro, Thielen; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Nakashima, McDermott.
4/4/2017	H	Reported from JUD (Stand. Com. Rep. No. 1573) as amended in HD 1, recommending passage on Second Reading and placement on the calendar for Third Reading.
4/4/2017	H	Passed Second Reading as amended in HD 1; placed on the calendar for Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Gates, Quinlan excused (2).

4/6/2017	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Oshiro, Saiki, Say excused (3). Transmitted to Senate.
4/7/2017	S	Received from House (Hse. Com. No. 466).
4/7/2017	S	Senate disagrees with House amendments.
4/7/2017	H	Received notice of disagreement (Sen. Com. No. 540).
4/17/2017	H	House Conferees Appointed: Nishimoto Chair; Oshiro, McDermott.
4/17/2017	S	Received notice of appointment of House conferees (Hse. Com. No. 587).
4/18/2017	S	Senate Conferees Appointed: Keith-Agaran Chair; Kim, K. Rhoads.
4/18/2017	H	Received notice of Senate conferees (Sen. Com. No. 681).
4/20/2017	S	Conference committee meeting scheduled for 04-21-17 10:50AM in conference room 325.
4/24/2017	S	Conference committee meeting scheduled for 04-25-17 10:20AM in conference room 325.
4/25/2017	S	Conference committee meeting to reconvene on 04-26-17 2:00PM in conference room 325.
4/26/2017	S	Conference committee meeting to reconvene on 04-27-17 10:30AM in conference room 325.
4/27/2017	S	Conference committee meeting to reconvene on 04-27-17 4:00PM in conference room 325.
4/27/2017	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 3 Aye(s): Senator(s) Keith-Agaran, Kim, K. Rhoads; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
4/27/2017	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 3 Ayes: Representative(s) Nishimoto, Oshiro, McDermott; Ayes with reservations: none; 0 Noes: none; and 0 Excused: none.
4/27/2017	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 76).
4/27/2017	S	48 Hrs. Notice (as amended CD 1) 05-02-17.
4/27/2017	H	Reported from Conference Committee (Conf Com. Rep. No. 76) as amended in (CD 1).
4/27/2017	H	Forty-eight (48) hours notice Tuesday 05-02-17.
5/2/2017	S	Passed Final Reading, as amended (CD 1). 25 Aye(s); Aye(s) with reservations: none . 0 No(es): none. 0 Excused: none.
5/2/2017	H	Passed Final Reading as amended in CD 1 with none voting aye with reservations; none voting no (0) and none excused (0).
5/3/2017	H	Received notice of Final Reading (Sen. Com. No. 737).
5/4/2017	S	Received notice of passage on Final Reading in House (Hse. Com. No. 642).
5/4/2017	S	Enrolled to Governor.

**S** = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

## SB572 SD1 HD1 CD1

## A BILL FOR AN ACT

RELATING TO INFORMATION PRACTICES.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1       SECTION 1. Section 92F-11, Hawaii Revised Statutes, is  
2 amended by amending subsection (e) to read as follows:

3       "(e) ~~[Each agency]~~ The office of information practices may  
4 adopt rules, pursuant to chapter 91, to protect ~~[its]~~ agency  
5 records from theft, loss, defacement, alteration, or  
6 deterioration and to prevent manifestly excessive interference  
7 with the discharge of ~~[its]~~ agencies' other lawful  
8 responsibilities and functions."

9       SECTION 2. Section 92F-26, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       "§92F-26 Rules. The office of information practices shall  
12 adopt rules, ~~[under]~~ pursuant to chapter 91, establishing  
13 procedures necessary to implement or administer this part, which  
14 the agencies shall ~~[adopt, insofar as practicable,]~~ follow, in  
15 order to ensure uniformity among state and county agencies."

16       SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18       SECTION 4. This Act shall take effect on July 1, 2017.



**S.B. NO.** 572  
S.D. 1  
H.D. 1  
C.D. 1

**Report Title:**

Office of Information Practices; Freedom of Information;  
Disclosure Rules

**Description:**

Authorizes the Office of Information Practices to adopt administrative rules regarding protection of state and county agency records subject to disclosure and other rules necessary to administer the Uniform Information Practices Act. (CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

2017-2645 SB572 CD1 SMA.doc



**Agenda Item II.B.7.d.,  
Page 2  
[City Council – BILL078(15)]**

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
STATUS

ORDINANCE

**BILL 78 (2015), CD1, FD1**

Introduced: 10/29/15

By:

KYMBERLY PINE

Committee:

BUDGET

Title: A BILL FOR AN ORDINANCE RELATING TO SPONSORSHIPS.

APPROVED VERSIONS:	COMMITTEE REPORTS:	AGENDAS:	MINUTES:	TESTIMONIES - <a href="#">Click Here</a>
<a href="#">BILL 78 (2015)</a> <a href="#">BILL 78 (2015), CD1 – 2/10/16</a> <a href="#">BILL 78 (2015), CD1 – 04/05/17</a> <a href="#">BILL 78 (2015), CD1, FD1</a>	<a href="#">CR-12(16)</a> <a href="#">CR-119(17)</a>	<a href="#">11/04/15 - COUNCIL</a> <a href="#">11/18/15 - BUDGET</a> <a href="#">01/13/16 - BUDGET</a> <a href="#">01/27/16 - COUNCIL</a> <a href="#">02/10/16 - BUDGET</a> <a href="#">03/02/16 - BUDGET</a> <a href="#">04/05/17 - BUDGET</a> <a href="#">04/26/17 - COUNCIL</a>	<a href="#">11/04/15 - COUNCIL</a> <a href="#">11/18/15 - BUDGET</a> <a href="#">01/13/16 - BUDGET</a> <a href="#">01/27/16 - COUNCIL</a> <a href="#">02/10/16 - BUDGET</a> <a href="#">03/02/16 - BUDGET</a>	
<a href="#">(For Proposed Drafts, Click Here)</a>		-		
Voting Legend: * = Aye w/Reservations				
11/04/15	COUNCIL	BILL ADDED TO THE AGENDA. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON BUDGET. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.		
11/18/15	BUDGET	BILL DEFERRED IN COMMITTEE.		
01/13/16	BUDGET	CR-12(16) – BILL REPORTED OUT COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.		
01/16/16	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.		
01/27/16	COUNCIL/PUBLIC HEARING	CR-12(16) ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON BUDGET. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.		
02/03/16	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.		
02/10/16	BUDGET	BILL AMENDED TO CD1 AND DEFERRED IN COMMITTEE		
03/02/16	BUDGET	BILL DEFERRED IN COMMITTEE.		
04/05/17	BUDGET	CR-119(17) – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AS AMENDED IN CD1 FORM.		



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04/26/17	COUNCIL	BILL AMENDED TO HAND-CARRIED FD1 (OCS2017-0457/4/26/2017 10:09 AM) 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. CR-119(17) ADOPTED AND BILL 78 (2015), CD1, FD1 PASSED THIRD READING. 7 AYES: ANDERSON, ELEFANTE, KOBAYASHI*, MANAHAN, MENOR, OZAWA, PINE. 2 NOES: FUKUNAGA, MARTIN.
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## Related Communications:

No.	From
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M-3460 Cedric Gates, Waianae Coast Neighborhood Board - Supports Bill 78. Budget

2016 Communications

CC-37(16) PINE – Photographs of signs and plaques

M-73(16) Shirley Swinney - Supports

M-317 Jeremy Lam M.D. – Comments

M-420 Ann Egleston – Opposes

M-421 Ann Marten - Opposes

M-422 Aubrey Hawk - Opposes

M-423 Barbara Krasniewski - Opposes

M-424 Bill van den Hurk - Opposes

M-425 Blaine Fergerstrom - Opposes

M-426 Brian Bagnall - Opposes

M-427 Carole Arnott - Opposes

M-428 Catherine Cooke - Opposes

M-429 Cynthia Frith - Opposes

M-430 Elizabeth Riegels - Opposes

M-431 Francine Hagstrom - Opposes

M-432 Glenn Otaguro – Opposes

M-433 James Raymond - Opposes

M-434 Joanne Farmer - Opposes

M-435 John Shockley, Free Access Coalition - Supports

M-436 Joseph A. Bobich - Opposes

M-437 Kathleen Bryan - Opposes

M-438 Kathy Whitmire - Opposes

M-439 Kealii Lopez - Opposes



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 78 (2015), CD1, FD1

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**A BILL FOR AN ORDINANCE**

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RELATING TO SPONSORSHIPS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to establish a process to obtain sponsorships for city facilities, parks, programs, equipment, and tangible property within set guidelines and procedures for the purpose of optimizing non-property tax revenue sources.

SECTION 2. Chapter 2, Revised Ordinances of Honolulu 1990 ("Executive Agencies—Additional Powers, Duties and Functions"), is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

**"Article \_\_. Sponsorship of City Assets**

**Sec. 2-\_\_.1 Declaration of legislative intent — purpose.**

In an effort to utilize and maximize the community's resources, it is in the best interest of the city to create and enhance relationships with the private sector, including individuals, corporations and other organizations, through commercial sponsorships. Sponsorship arrangements are deemed not to constitute a public forum for communication and debate. The rights established by the sponsorships are established and retained at the city's discretion. Sponsorships will create alternate revenue streams that will increase the city's ability to deliver services and to maintain city assets, including its facilities, parks, programs, equipment, and tangible property, and provide enhanced levels of service and maintenance beyond the core levels funded from the city's general fund for the benefit of users and the community at large.

In appreciation of such support, it is the policy of the city to provide sponsors with suitable acknowledgement of their contribution. However, such recognition should adhere to the aesthetic values and purposes of the city's assets. In addition, such recognition should not detract from the public's experience or expectation, nor should it impair the visual qualities of the city asset or be perceived as creating a proprietary interest. Sponsorship recognition must conform to all applicable laws and rules.

The purpose of this article is to establish the criteria and parameters for the granting of sponsorship opportunities in relation to city assets. This article provides executive agencies the authority to consider and approve sponsorship opportunities for a person that has provided a financial contribution to support a city asset.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 78 (2015), CD1, FD1

---

**A BILL FOR AN ORDINANCE**

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**Sec. 2-\_\_\_.2 Definitions.**

As used in this article, unless the context otherwise requires:

"Cash sponsorship" means a type of sponsorship where a sponsor provides cash.

"City asset" means a city facility, park, program, equipment, or tangible property.

"Equipment" means any vehicle, construction equipment, machine, device, gear, apparatus, or tool with a value in excess of \$25,000 used in the operation of the city but does not include city-operated buses or special transit service vehicles.

"Facility" means any building, including any stadium, arena or station, owned, managed or operated by the city.

"Financial contribution" means cash, goods, or services, paid or provided to the city at such time or times as set forth in the sponsorship agreement.

"In-kind sponsorship" means a type of sponsorship where a sponsor provides a good or service.

"Person" means the same as defined in Section 1-4.1.

"Program" means any program, festival, contest, event, fair, athletic race, gala or similar event provided by a city department in connection with the operations of a department.

"Sponsor" means a person that enters into a sponsorship agreement with the city.

"Sponsorship" means a mutually beneficial arrangement between the city and a person, wherein the person provides a financial contribution to the city in return for sponsor recognition on or in connection with one or more city assets, for a specified period of time.

"Sponsorship agreement" means a written agreement executed between the city and a sponsor governing a sponsorship, on terms and conditions acceptable to the city and the sponsor. A sponsorship agreement may include provisions that allow for the recognition of the sponsor.



## CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 78 (2015), CD1, FD1

### A BILL FOR AN ORDINANCE

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"Sponsorship recognition" means a tangible acknowledgement and expression of gratitude issued as part of the sponsorship agreement.

#### **Sec. 2-\_\_\_.3 Exclusions.**

This article does not apply to:

- (a) Gifts, grants, or unsolicited donations where no sponsorship agreement exists or is required;
- (b) Memorials and the naming of a city park, site, or facility subject to Sections 22-9.3 to 22-9.5;
- (c) Parades or events sponsored or co-sponsored by the city pursuant to other ordinances or rules;
- (d) Facilities in Kapiolani Regional Park; and
- (e) Facilities in Hanauma Bay Nature Preserve.

#### **Sec. 2-\_\_\_.4 Authorization required.**

- (a) City assets are intended and exclusively used for operations of the city in providing governmental services and programs to and for the public, and except as required by law or expressly established by an affirmative action by the city council, no person will have a right to access or use any city asset for any purpose other than the intended and authorized governmental purpose or service. Placement of sponsorship messages upon a city asset will require specific authorization.
- (b) The city possesses sole and final decision-making authority for determining the appropriateness of a sponsorship and reserves the right to refuse to enter into any proposed sponsorship agreement. Approval of proposals will be subject to the following guidelines:
  - (1) A director of an executive agency shall have the authority to enter into a sponsorship agreement, pursuant to the rules to be adopted under Section 2-\_\_\_.6, that is for:
    - (A) A term of less than five years; and
    - (B) A financial contribution of less than \$50,000;



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 78 (2015), CD1, FD1

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**A BILL FOR AN ORDINANCE**

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- (2) All sponsorship agreements for a financial contribution of \$50,000 or more must be approved by a resolution adopted by the city council; and
- (3) All sponsorship agreements for a period of five years or more must be approved by a resolution adopted by the city council.

**Sec. 2-\_\_\_.5 Funds received from sponsorship agreements.**

All funds received pursuant to sponsorship agreements will be deposited into the appropriate fund as determined by the director of budget and fiscal services, provided that such funds are expended for their designated purpose.

**Sec. 2-\_\_\_.6 Sponsorship rules.**

The director of budget and fiscal services or other director as designated by the mayor shall adopt rules, in accordance with HRS Chapter 91, for the implementation, administration, and enforcement of this article. In adopting the rules, the director of budget and fiscal services or other director as designated shall ensure that this article and any sponsorship agreements entered into pursuant to this article are implemented in a manner consistent with all other applicable laws including and without limitation, HRS Chapter 89.

**Sec. 2-\_\_\_.7 Sponsorship requirements.**

- (a) The following requirements apply to all sponsorship agreements:
  - (1) The city shall not relinquish any aspect of the city's right to direct, manage and control the city asset;
  - (2) Sponsorship recognition, publications, and publicity must conform to all applicable laws and rules, including but not limited to HRS Chapter 445, Part IV, pertaining to outdoor advertising, including billboards, and Chapter 21, Article 7, pertaining to sign regulations;
  - (3) The sponsorship must not create a conflict of interest for the city;
  - (4) The sponsorship must not confer a personal benefit, directly or indirectly, to any particular city officer or employee;



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 78 (2015), CD1, FD1

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**A BILL FOR AN ORDINANCE**

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- (5) Sponsorships shall not be deemed to constitute an endorsement of the sponsor or its services and products, or create any proprietary interest of the sponsor in the city or the city assets;
- (6) No materials, communications, or advertisements including, but not limited to, print, video, internet, broadcast, or display items developed to promote or communicate the sponsorship, may use the city's name, seal, or logo without express prior written approval from the city;
- (7) Any physical form of sponsorship recognition must blend in with the surrounding environment;
- (8) The sponsorship must not discriminate against any person on the basis of race, color, creed, religion, sex, including gender identity and expression, sexual orientation, age, marital status, ancestry, national origin, or disability;
- (9) Sponsorship recognition, branding, publicity, and advertising in conjunction with the sponsorship agreement must not contain the following:
  - (A) Obscenity;
  - (B) Pornography;
  - (C) Incitement to imminent lawless action;
  - (D) Speech presenting a grave and imminent threat;
  - (E) Fighting words;
  - (F) Fraudulent material;
  - (G) True threats;
  - (H) Defamatory, libelous, or slanderous material;
  - (I) Solicitations to commit, or speech integral to, criminal conduct;
  - (J) The promotion of drugs, alcohol, tobacco, gambling, or adult entertainment;



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**A BILL FOR AN ORDINANCE**

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- (K) Political campaign speech, or speech that supports or opposes or appears to support or oppose a ballot measure or initiative, or refers to any person in or campaigning for public office; or
- (L) Religious speech that advocates or opposes a religion or religious belief;
- (10) Each sponsorship agreement must specify whether the sponsorship for a particular asset will be exclusive or non-exclusive;
- (11) Sponsorship recognition may include the following, or any combination thereof, during the term of the agreement:
  - (A) Recognition of the sponsor for a specific city program;
  - (B) Appropriate mention in media releases and promotional materials of a sponsor for the city program;
  - (C) Appropriate sponsorship recognition or display at the city program location;
  - (D) Appropriate recognition on the program website as a sponsor for the program; or
  - (E) Other possible benefits as negotiated;
- (12) Sponsors shall defend, indemnify, and hold harmless the city, its officers, agents, and employees against all liability, loss, damage, cost, and expense, including attorneys' fees, arising out of or resulting from the acts or omissions of the sponsor, its directors, employees, officers, agents, or contractors, in connection with the sponsorship and the sponsorship agreement;
- (13) Sponsorships may be terminated in writing at any time during the term of the sponsorship agreement when, in the sole determination of the city, the sponsorship is no longer in the best interest of the city;
- (14) The city retains its rights and discretion to exercise full editorial control over the placement, content, appearance, and wording of sponsorship recognitions, affiliations, and messages; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 78 (2015), CD1, FD1

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**A BILL FOR AN ORDINANCE**

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- (15) Sponsorship materials that advocate, contain price information or an indication of associated savings or value, request a response, or contain comparative or qualitative descriptions of products, services, or organizations are prohibited.
- (b) The following sponsorships will not be accepted:
  - (1) Sponsorships from persons that practice or promote discrimination based on race, color, creed, religion, sex, including gender identity and expression, sexual orientation, age, marital status, ancestry, national origin, or disability;
  - (2) Sponsorships from persons that have a pending open application with the city for a discretionary approval;
  - (3) Sponsorships from persons opposing the city in a pending or ongoing legal proceeding; and
  - (4) Sponsorships that involve situations where the corporation counsel determines that there would be or are conflicts of interest.

**Sec. 2-\_\_8 Severability.**

The provisions of this article are declared to be severable. If any portion of this article is held invalid for any reason, the validity of any other portion of this article which may be given effect without the invalid portion will not be affected and if the application of any portion of this article to any person, property, or circumstance is held invalid, the application of this article to any other person, property, or circumstance will not be affected."





**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 78 (2015), CD1, FD1

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**A BILL FOR AN ORDINANCE**

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SECTION 3. This ordinance takes effect upon its approval, and will be repealed five years after the date of its approval.

INTRODUCED BY:

Kymberly Marcos Pine

Ann Kobayashi

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE OF INTRODUCTION:

October 29, 2015

Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu



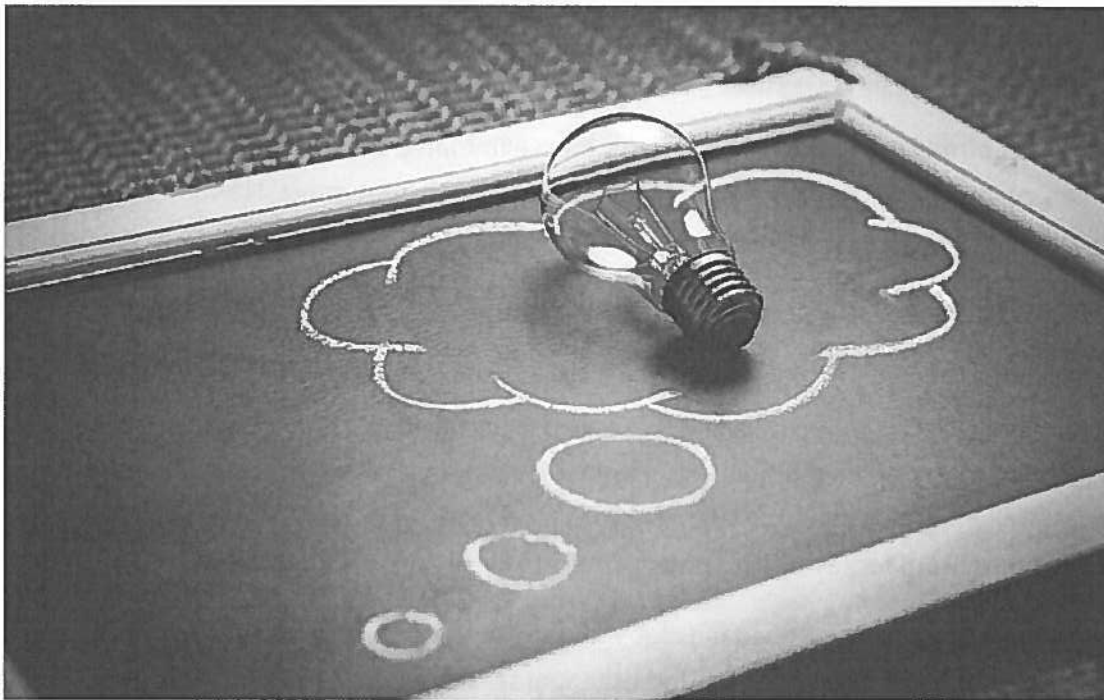
May 1, 2017 | 77° | Check Traffic

Editorial | Our View

## Refine proposal on sponsorships

Posted April 20, 2017

April 20, 2017



COURTESY PIXABAY

Facing public resistance to raising fees and taxes to pay for essential city services, the city has resurrected a 2-year-old proposal to raise money another way — commercial sponsorship of city assets.

In theory, it's a good idea.

The city's inadequate record of maintaining and improving its properties, especially public parks and facilities like neighborhood gyms or entertainment venues, has not motivated the public to support tax increases to make them better.

Civic-minded businesses and community organizations who want to support specific city assets would have an established way to do so. It could be a win-win.

But the devil is always in the details, and Bill 78, first introduced in 2015 and modified heavily since then, is notably lacking in some important ones. Crucial elements would be filled in by the city administration through the writing of administrative rules.

For instance, the bill doesn't mention "signs" or "signage," but doesn't prohibit them either. Rather, "appropriate sponsorship recognition or display" would be allowed, provided that such recognition "blend in with the surrounding environment," whatever that means. Presumably, such displays could include signs bearing company logos.

Critics of the bill, including The Outdoor Circle, fear the bill would lead to a proliferation of off-site outdoor advertising, eroding the city and state's strict signage rules that are designed to restrict visual pollution. Maybe.

The bill requires that the city conform to state and city laws regarding sign displays. But rules can be bent, especially if the city really wants to make a deal — and no doubt it will, given the financial pressures of an underfunded, multibillion-dollar rail project. And sponsor recognition isn't limited to signs on land; it could turn up on city vehicles, although not on city buses.

Unlike in other states, Hawaii's sign laws have eliminated the visual blight of billboards — an aesthetic value, to be sure, but also an economic imperative. Hawaii's beautiful natural landscape is its chief selling point. Preventing off-site advertising is crucial in maintaining that value.

Provided Bill 78 preserves this intent, it has some merit.

Commercial sponsorship of municipal assets is hardly new. Other cities have programs even more aggressive than Bill 78's. For instance, the bill would not allow the city to sell naming rights for memorials, city parks, and facilities or sites. But it would give the city another tool for leveraging public assets to raise badly needed funds.

It's a tool that should be used judiciously. Sponsorships come and go, and the city can't become dependent on them to fund essential services; Bill 78 itself is a five-year pilot project. Nor can the city allow large sponsors to exert undue influence on city policies in exchange for their money.

That's why it's imperative that any sponsorship agreements be handled with maximum public disclosure, to ensure that the public interest is protected.

It's important to be able to follow the money. Bill 78 requires the funds to be spent "for their designated purpose," as agreed to by the city and the sponsor — an agreement that must be part of the public record.

The sponsor's contribution would be "deposited into the appropriate fund as determined by the director of budget and fiscal services," the bill says. Those who anticipate the creation of a special fund to improve their beloved neighborhood park may be disappointed if the budget director simply casts the money into the city's general fund.

As it stands, Bill 78 — up for final City Council vote on Wednesday — is not ready for prime time. It should be improved with more specific restrictions on signage to ensure there is no conflict with existing law. It also needs clearer language about what could constitute a "conflict of interest" in a sponsorship arrangement. Nonetheless, with increasing pressure on city services and the giant shadow of rail, commercial sponsorship is looking better and better.

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**Agenda Item II.C.,  
Page 3  
[HI ADMIN RULES  
DRAFTING MANUAL]**

# **HAWAII ADMINISTRATIVE RULES DRAFTING MANUAL**

**THIRD EDITION**

By  
KEN H. TAKAYAMA  
Director (Retired--Volunteer)

Background to Administrative Rulemaking

By  
Samuel B. K. Chang  
Director (Retired)

June 2016

Charlotte A. Carter-Yamauchi  
Director  
Legislative Reference Bureau  
State Capitol  
Honolulu, Hawaii 96813

Internet: <http://lrbhawaii.org/>

## Chapter 3

### ADMINISTRATIVE RULEMAKING

#### Background

The purposes of administrative rulemaking are to implement legislation and to establish operating procedures for state agencies. Generally, a legislative act will provide the skeleton or superstructure for a program. Agencies are required to "fill in the details" and implement the program on a day-to-day basis. Illustratively, the state unemployment insurance law<sup>1</sup> requires, among other things, that a claimant (1) be registered for work; (2) be available for work; (3) not have quit the claimant's last job voluntarily without good cause or have been fired for misconduct. The statute, however, does not spell out in any greater detail what any of those conditions mean. Consequently, the department has to make certain determinations in order to apply the statutory requirements to varying classes of applicants.

The result of this process of "filling in the details" is that the departments are accorded a great deal of discretion in applying the law, particularly where the controlling statute is couched in general terms, e.g., "misconduct". Clearly, agencies should not be allowed to apply differing standards among similarly situated members of the public.

The law that controls administrative rulemaking is chapter 91, Hawaii Revised Statutes (the Hawaii Administrative Procedure Act). Briefly, the law requires, among other things, that administrative agencies follow certain specified procedures in order to impose upon the public requirements which affect private rights. For a rule to become binding upon the public, an agency must (1) publish notice of public hearing; (2) hold a hearing in which all persons are allowed to submit data, views, or arguments orally or in writing; (3) have the rule approved by the governor; and (4) file the rule in the office of the lieutenant governor on a permanent basis for public inspection.

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1. *Hawaii Rev. Stat.*, ch. 383.

## **TITLE 8. PUBLIC PROCEEDINGS AND RECORDS**

### Chapter

- 91 Administrative Procedure
- 92 Public Agency Meetings and Records
- 92E Fair Information Practice (Confidentiality of Personal Record)--Repealed
- 92F Uniform Information Practices Act (Modified)
- 93 Government Publications
- 94 Public Archives; Disposal of Records
- 95 Destroying or Defacing Official Notices--Repealed
- 96 The Ombudsman
- 97 Lobbyists
- 98 Uniform Electronic Legal Material Act

### **Cross References**

Alternative dispute resolution center, see chapter 613.  
Uniform electronic legal material act, see chapter 98.

### **CHAPTER 91**

### **ADMINISTRATIVE PROCEDURE**

### Section

- 91-1 Definitions
- 91-2 Public information
  - 91-2.5 Fees for proposed and final rules
  - 91-2.6 Proposed rulemaking actions and rules; posting on the lieutenant governor's internet website
- 91-3 Procedure for adoption, amendment, or repeal of rules
- 91-4 Filing and taking effect of rules
  - 91-4.1 Rulemaking actions; copies in Ramseyer format
  - 91-4.2 Rule format; publication of index
  - 91-4.3 Price
  - 91-4.4 Form of publication
- 91-5 Publication of rules
- 91-6 Petition for adoption, amendment or repeal of rules
- 91-7 Declaratory judgment on validity of rules
- 91-8 Declaratory rulings by agencies
  - 91-8.5 Mediation in contested cases
- 91-9 Contested cases; notice; hearing; records
  - 91-9.5 Notification of hearing; service
- 91-10 Rules of evidence; official notice
- 91-11 Examination of evidence by agency
- 91-12 Decisions and orders
- 91-13 Consultation by officials of agency
  - 91-13.1 Administrative review of denial or refusal to issue license or certificate of registration
  - 91-13.5 Maximum time period for business or development-related permits, licenses, or approvals; automatic approval; extensions



91-14 Judicial review of contested cases  
91-15 Appeals  
91-16 Severability  
91-17 Federal aid  
91-18 Short title

### **Note**

Judiciary report to 2019 legislature on change in judicial proceedings made by L 2016, c 48. L 2016, c 48, §11.

### **Cross References**

Small business regulatory flexibility act, see chapter 201M.  
Uniform electronic legal material act, see chapter 98.

### **Attorney General Opinions**

Because this chapter provides for a decision in a contested case to be rendered by an agency, a decision rendered by an official who is not within that agency would be the exception and not the rule. This chapter does not require a hearings officer from outside the department for administrative hearings. Att. Gen. Op. 98-6.

### **Law Journals and Reviews**

Sandy Beach Defense Fund v. City and County of Honolulu: The Sufficiency of Legislative Hearings in an Administrative Setting. 12 UH L. Rev. 499.  
The Lum Court, Land Use, and the Environment: A Survey of Hawai'i Case Law 1983 to 1991. 14 UH L. Rev. 119.  
Residential Use of Hawai'i's Conservation District. 14 UH L. Rev. 633.

### **Case Notes**

Statutory authority is necessary for administrative body to reconsider prior quasi-judicial decisions on its own initiative. 54 H. 621, 513 P.2d 1001.

Under doctrine of necessity, official otherwise disqualified can act if jurisdiction is exclusive and substitution is not provided. 54 H. 621, 513 P.2d 1001.

University rules do not have force of law unless Hawaii administrative procedure act is complied with. 56 H. 680, 548 P.2d 253.

Rehearings before administrative bodies are addressed to their own discretion and only the clearest abuse of discretion could sustain an exception to rule. 60 H. 166, 590 P.2d 524.

Where health department did not have rules adopted under this chapter governing the standards of emissions of hydrogen sulfide into the air as required by §342B-32 (1991) at the time geothermal well developer was issued permit, department was required to refuse the issuance of the permit. 73 H. 56, 828 P.2d 801.

Department did not violate Hawaii administrative procedure act when it circulated a memorandum interpreting "sole source" provisions of Hawaii purchasing law to other state agencies. 76 H. 332, 876 P.2d 1300.

Giving precedential effect to prior commission decisions does not constitute rule-making. 81 H. 459, 918 P.2d 561.

Public utilities commission did not violate Hawaii administrative procedure act by not promulgating rules to establish when transmission lines will be placed underground. 81 H. 459, 918 P.2d 561.

Public utilities commission's reliance on adjudication to develop underground transmission line policy not abuse of discretion where commission did not circumvent requirements of Hawaii administrative procedure act and appellants did not suffer undue hardship relying on past commission policy. 81 H. 459, 918 P.2d 561.

A water management area designation is not the product of a contested case hearing, under this chapter, from which a direct appeal to the supreme court may be brought under §174C-60. 83 H. 484, 927 P.2d 1367.

Where administrative rules failed to set forth the method by which department determined general assistance amounts, and the method used by department to determine amounts was adopted without compliance with this chapter, administrative rules contravened statutory mandate of §346-71(f) (1996) and were thus void and unenforceable. 88 H. 307, 966 P.2d 619.

Where a public hearing pertaining to the issuance of a liquor license was statutorily required under §§281-52 and 281-57, and petitioner's legal rights, duties, and privileges were determined based on the public hearing regarding the decision to grant or deny a liquor license to petitioner, the public hearing was a "contested case" hearing governed by this chapter; thus, (1) petitioner was entitled to judicial review under §91-14, (2) §91-11 applied to proceedings on petitioner's application for liquor license, and (3) the liquor commission did not comply with §91-11. 118 H. 320, 189 P.3d 432.

Planning and permitting department's policy of refusing to publicly disclose developer's engineering reports prior to their approval constituted a "rule"; as this policy was not "published or made available for public inspection" nor did plaintiff have actual knowledge of the policy prior to its initial request for the reports, department did not comply with this chapter and was proscribed from invoking this policy; thus, department violated this chapter by refusing to publicly disclose any unaccepted engineering reports and written comments, and all of department's files, including developer's file, were public records that could be examined upon request. 119 H. 90, 194 P.3d 531.

Right to appeal from administrative agency's decision is limited by this chapter. 9 H. App. 298, 837 P.2d 311.

Section 52D-8 provides officers with a constitutionally protected property interest - the right to legal representation for acting within the scope of their duty; due process thus entitles an officer to a contested case hearing under this chapter before an officer can be deprived of this interest. 89 H. 221 (App.), 971 P.2d 310.

In the context of parole hearings, the Hawaii paroling authority does not "adjudicate contested cases" because a Hawaii paroling authority parole proceeding is not a "contested case" as defined under this chapter. 93 H. 298 (App.), 1 P.3d 768.

Since the addition of two extra hunting days to each week of the hunting season concerned "conditions for entry into game management areas, and public hunting areas designated by the department of land and natural resources" and "open seasons" for hunting, the express language of §183D-3 mandated that in order to add the two weekdays for bird hunting, the

department had to amend Hawaii administrative rule 13-122-4 pursuant to this chapter. 117 H. 16 (App.), 175 P.3d 126.

[Previous](#)

[Vol02\\_Ch0046-0115](#)

[Next](#)

## **§91-1 Definitions.** For the purpose of this chapter:

- (1) "Agency" means each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.
- (2) "Persons" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.
- (3) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding.
- (4) "Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.
- (5) "Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.
- (6) "Agency hearing" refers only to such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14. [L 1961, c 103, §1; Supp. §6C-1; HRS §91-1]

## **Law Journals and Reviews**

The Protection of Individual Rights Under Hawai'i's Constitution. 14 UH L. Rev. 311.

## **Case Notes**

### **Agency.**

Generally. 55 H. 538, 524 P.2d 84.

Administrative agency is not a "person" under Civil Rights Act, 42 USCA 1983. 396 F. Supp. 375.

City council is not subject to the procedural requirements of Hawaii administrative procedure act when acting in either a legislative or nonlegislative capacity. 70 H. 361, 773 P.2d 250.

Executive director of Hawaii civil rights commission was not an "agency" because the director neither made rules nor adjudicated contested cases. 104 H. 158, 86 P.3d 449.

County of Hawai'i department of finance was an "agency" within the meaning of chapter 91, and was not a "person" entitled to appeal under §91-14 (prior to 1993 amendment). 77 H. 396 (App.), 885 P.2d 1137.

### **Agency hearing.**

Hearing concerning transfer of prisoner to mainland prison not an "agency hearing". 63 H. 138, 621 P.2d 976.

Hearing before zoning board of appeals was properly denominated as the "agency hearing", as contemplated by the definition of "contested case" in paragraph (5), where appellant temple was permitted to introduce relevant evidence and cross-examine witnesses. 87 H. 217, 953 P.2d 1315.

Where a hearing on a petition for a declaratory order before the public utilities commission was discretionary and not required by law, the

dismissal order was not a contested case under paragraph (5); therefore, as a direct appeal to the intermediate appellate court (ICA) under §91-14(b) and §269-15.5 only applied to contested cases, appellant power company was not entitled to appeal the dismissal order directly to the ICA; thus, the ICA lacked jurisdiction over appellant's appeal. 126 H. 242 (App.), 269 P.3d 777.

### **Contested case.**

Generally. 55 H. 538, 524 P.2d 84.

A hearing "required by law" includes those required by due process. 55 H. 478, 522 P.2d 1255.

"Contested case" construed. 56 H. 680, 548 P.2d 253.

Hearing "required by law" includes constitutional and statutory law. 58 H. 386, 570 P.2d 563.

Public hearing conducted pursuant to public notice has been deemed a contested case. 65 H. 506, 654 P.2d 874.

"Fair hearing" regarding the reduction of welfare benefits was a "contested case". 66 H. 485, 666 P.2d 1133.

Evidentiary hearing under PURPRA was contested case rather than rulemaking. 66 H. 538, 669 P.2d 148.

Granting of special management area permit did not involve a "contested case". 69 H. 81, 734 P.2d 161.

Because the subject matter of the underlying hearing did not involve the homestead lessees' property interests, the Hawaiian homes commission hearing that transpired was not required by law and therefore was not a contested case as defined by paragraph (5). 76 H. 128, 870 P.2d 1272.

Public hearings held by department were "contested cases". 77 H. 64, 881 P.2d 1210.

Revocation of mooring permit not contested case. 3 H. App. 91, 641 P.2d 991.

In the context of parole hearings, the Hawaii paroling authority does not "adjudicate contested cases" because a Hawaii paroling authority parole proceeding is not a "contested case" as defined under this chapter. 93 H. 298 (App.), 1 P.3d 768.

### **Rules.**

Generally. 55 H. 538, 524 P.2d 84.

Defendant's approval of use of wood preservative for treating structural lumber in Hawaii, together with defendant's conditions of approval, would appear to be rulemaking. 939 F. Supp. 746.

"General applicability"; "implement law or policy"; "internal management". 55 H. 478, 522 P.2d 1255.

Manual of instructions to personnel of department of social services and housing covering welfare fraud investigations dealt only with "internal management". 58 H. 94, 564 P.2d 1271.

Policy decisions governing transfer of prisoners from state to federal prison do not require publication. 58 H. 386, 570 P.2d 563.

Internal management; rule covering dress standards of visitors to prison. 59 H. 346, 581 P.2d 1164.

Hawaii administrative procedure act held not applicable to advisory functions of the county planning commission. 60 H. 428, 591 P.2d 602.

"Descriptive words and phrases" distributed by department to unemployment compensation appeals referees are rules. 62 H. 286, 614 P.2d 380.

Contract in which board of land and natural resources rented excess transmission capacity in Molokai Irrigation System is not a rule. Concerned only internal management because it dealt with a matter within the custodial management of the board. 62 H. 546, 617 P.2d 1208.

Internal management. 63 H. 117, 621 P.2d 957.

Agency's requirement that no-fault claimants submit to insurer-ordered medical exams is a "rule". 67 H. 148, 682 P.2d 73.

Approval of use of specific breath testing apparatus was not rulemaking. 67 H. 451, 691 P.2d 365.

State hospital's bylaws regarding corrective action against a doctor are not "rules". 68 H. 422, 717 P.2d 1029.

Circular was sent only to other state agencies and did not command or prohibit any action by any member of the public or any public employee; by the clear language of paragraph (4), therefore, Hawaii administrative procedure act did not apply, and conclusion of law stating that circular was not a rule or regulation, but was merely a guideline and was not subject to provisions of Hawaii administrative procedure act was not wrong. 76 H. 332, 876 P.2d 1300.

Where city appraiser's unwritten methodology for determining imparted value fell within definition of a rule for purposes of paragraph (4), city needed to follow rulemaking procedures set forth in §91-3 prior to applying imparted value deductions toward golf course assessments. 89 H. 381, 974 P.2d 21.

Water resource management commission's distinctive treatment of "nonagricultural uses", such as golf course irrigation, in its water use permit and policy decision did not constitute "illegal rulemaking" where commission did not propose any general rules automatically applicable in all circumstances, but instead devised a principled solution to a specific dispute based on "facts applied to rules that have already been promulgated by the legislature". 94 H. 97, 9 P.3d 409.

Planning and permitting department's policy of refusing to publicly disclose developer's engineering reports prior to their approval constituted a "rule"; as this policy was not "published or made available for public inspection" nor did plaintiff have actual knowledge of the policy prior to its initial request for the reports, department did not comply with this chapter and was proscribed from invoking this policy; thus, department violated this chapter by refusing to publicly disclose any unaccepted engineering reports and written comments, and all of its files, including developer's file, were public records that could be examined upon request. 119 H. 90, 194 P.3d 531.

Agency's decision not a "rule" where it was made in a contested hearing that was accusatory in nature; distinction between rulemaking and adjudication discussed. 4 H. App. 463, 667 P.2d 850.

Police department regulation establishing procedures aimed at prescribing officers' activities regarding sobriety roadblocks was internal department regulation. 9 H. App. 98, 825 P.2d 1068.

Hawai'i county police department's field sobriety testing procedures are not "rules" subject to Hawaii administrative procedure act's rulemaking requirements. 9 H. App. 406, 844 P.2d 679.

Where Kauai police department's general order establishing authority and procedures at sobriety checkpoints concerned only the internal management of an agency and did not affect the private rights of or procedures available to the public, the general order was not required to be promulgated pursuant to chapter 11C, H. Admin Rules Drafting Manual Pg. 3 137 P.3d 373.



Effective Date 02/21/12

# City and County of Honolulu

## Administrative Directives Manual

### TABLE OF CONTENTS

<b>Index</b>	<b>SME</b>	<b>Subject</b>
<b>000</b>		<b>ADMINISTRATION</b>
<u>010</u>	MDO	Communicating Policy and Procedure Changes
<u>015</u>	MDO	City Business Hours
<u>020</u>	MDO	Attendance at Council and Committee Meetings
<u>030</u>	MDO	Statements of Understanding Between Departments
<u>040</u>	MDO	Intergovernmental Agreements
<u>050</u>	MDO	Agency Head's Absence
<u>060</u>	MDO	Commission on Culture and the Arts
<u>070</u>	MDO	Mayor Directives, Memoranda, and Department Policies and Circulars
<b>100</b>		<b>ETHICS</b>
<u>110</u>	MDO	Gifts to the City
<u>120</u>	DFM	Solicitations in City Hall and Other Municipal Facilities
<u>130</u>	MDO	Reporting of Fraud
<u>140</u>	DHR	Disclosure of Outside Interests
<u>150</u>	BFS	Integrity Hotline Program
<u>160</u>	Ethics	Use of City Resources
<b>200</b>		<b>EMERGENCY</b>
<u>210</u>	DFM	Emergency Procedure and Evacuation Plan Responsibility
<u>220</u>	DEM	City Government Function During Emergencies and Disasters
<b>300</b>		<b>FINANCIAL</b>
<u>310</u>	BFS	Status Report on CIP (formerly Management Reports)
<u>320</u>	BFS	Official Travel Policies
<u>330</u>	BFS	Indebtedness to the Government of Officers and Employees
<u>340</u>	BFS	Requesting Supplemental Appropriation Affecting Operating or Capital Improvement Budget
<u>350</u>	BFS	Unbudgeted Equipment Purchase/Lease/Rental Policy
<u>360</u>	BFS	Personal Services Contract
<u>361</u>	BFS	City Council Notification For Temporary Positions Not Authorized in the Executive Operating Budget Ordinance
<u>362</u>	BFS	Establishment, Filing and Allotment of Funds For Temporary Positions Not Authorized in the Executive Operating Budget Ordinance
<u>365</u>	BFS	Guidelines for the Use of Consultants
<u>366</u>	BFS	Procurement of Goods and Services
<u>370</u>	BFS	Monitoring Construction Contract Change Order Requests
<u>375</u>	BFS	Acceptance of Construction Projects



<u>380</u>	BFS	Real Property Asset Management Guidelines
<u>381</u>	BFS	Blind Vendor Program For Non-Exempt City Public Buildings
<u>385</u>	BFS	Rental, Lease, or Concession of City Owned Property
<u>386</u>	BFS	Lease of Office Space and Parking Space by the City
<u>387</u>	BFS	Employee Parking at City-owned Parking Lot Managed By a Management Company or at a Commercial Parking Lot
<u>388</u>	BFS	Identity Theft Prevention Program (ITPP)
<b>400</b>		<b>HUMAN RESOURCES</b>
<u>410</u>	BFS	Organizational Charts
<u>415</u>	BFS	Position Creations, Fills, and Reallocations
<u>420</u>	DHR	Equal Opportunity Program
<u>430</u>	DHR	Non-Discrimination on the Basis of Disability
<u>440</u>	DHR	Equal Employment Opportunity
<u>450</u>	DHR	Recruitment and Appointment Above the Minimum Step/Rate
<u>460</u>	DHR	Dual Employment
<u>470</u>	BFS	Temporary Assignments
<u>480</u>	DPR/DFM/ENV	City Supplied Perquisite Housing
<u>490</u>	MDO	Honoring Employees Upon Retirement
<b>500</b>		<b>INFRASTRUCTURE, FACILITIES, AND EQUIPMENT</b>
<u>510</u>	DFM	Mall Maintenance
<u>520</u>	BFS	Personal Use of City and County of Honolulu (City) Vehicles
<u>525</u>	BFS	Issuance of Sworn Statement in Support of Application for Employee Driver's Permit
<u>530</u>	DFM	Purchase of Automotive Equipment
<u>540</u>	HFD	Use of City Helicopters
<u>550</u>	DDC	Construction Sign Board For City Projects
<b>600</b>		<b>EVENTS/ACTIVITIES</b>
<u>610</u>	MDO	Coordinating Individual Department Public Events and Meetings
<u>620</u>	MDO	Approval of Printed Material for Public Functions
<u>630</u>	MDO	Brunch on the Beach, Sunset on the Beach, and Rediscover Oahu
<b>700</b>		<b>RECORDS</b>
<u>710</u>	CSD	Records Management and City Archives
<u>720</u>	CSD	City Publications for State Publication Distribution Center
<u>730</u>	MDO	Public Records Officer
<u>740</u>	CSD	City Notification of Contractual Study to State
<b>800</b>		<b>CORRESPONDENCE</b>
<u>810</u>	MDO	Guidance on Correspondence Control
<u>820</u>	MDO	Guidance on Preparing Correspondence, Letters, Reports, and Testimony
<u>830</u>	MDO	Document Control
<u>840</u>	MDO	Letters of Condolence
<b>900</b>		<b>GENERAL</b>
<u>910</u>	CSD	Relations with the State Ombudsman

**Subject No. 070**

Effective Date: 12/31/07

**Subject**

**MAYOR'S DIRECTIVES, MEMORANDA, AND DEPARTMENT POLICIES  
AND CIRCULARS**

**Subject Matter Expert**

MDO

**Reference**

RCH, Section 6-102(c)

**Purpose**

To explain the difference between the primary administrative guidance documents and how they are originated and amended.

**I. GENERAL**

Mayor's directives, memoranda, department policies and circulars, and the Administrative Directives Manual (ADM) provide the primary means of conveying official administrative guidance to all agencies of the executive branch of the City and County of Honolulu. Authoritative instructions pertaining to only one or two agencies are normally conveyed in a letter sent only to the agency or agencies involved.

**II. MAYOR'S DIRECTIVES**

- A. Mayor's directives are reserved for authoritative documents prepared for the mayor's signature. Their primary purpose is to promulgate policy requiring continuing action until rescinded or superseded. They may prescribe organization, conduct, methods, and procedures that have been initiated by the mayor or are of such importance that they should be published over the mayor's signature.
- B. Mayor's directives may be suggested by any department head and forwarded to the mayor through the managing director. A memorandum describing the need for the proposed directive should be included.
- C. Each mayor's directive, which will have a unique number, will summarize the mayor's desires and refer to the attached ADM page(s) for more detailed guidance. The ADM page(s) will provide complete guidance and follow the format of existing manual pages. The mayor's office will insert the directive number and appropriate ADM page number(s). (Exhibit 1.)

**III. MAYOR'S MEMORANDA**

- A. Mayor's memoranda are authoritative documents for short-duration instructions. They should only be used when the actions required are one-time or of a brief duration, or when the information conveyed has no continuing reference value. Mayor's memoranda are not used to establish policy.

- B. Mayor's memoranda may be suggested by any department head and forwarded to the mayor through the managing director. An example of the heading and signature block for a mayor's memoranda is to be found in the Secretary's Manual. No specific format is prescribed for the body. Memoranda will not be included in the ADM.

#### **IV. DEPARTMENTAL POLICIES AND CIRCULARS**

- A. Policies and circulars are a department's primary means of promulgating instructions and information that are directly related to the fulfillment of departmental RCH-prescribed powers, duties, and functions.
- B. Originating departments are granted complete flexibility to develop formats suitable for the fulfillment of their objectives. Policies and circulars may be initiated and rescinded or superseded by the originating department with approval by the managing director prior to distribution. A managing director's approval block will be placed on the bottom left side of the policy and circular signature page.

#### **V. ADMINISTRATIVE DIRECTIVES MANUAL POLICY GUIDANCE**

- A. The ADM includes only authoritative guidance from the mayor and the managing director. The policy guidance must pertain to all or most executive agencies and require continuing compliance until rescinded or superseded.
- B. While the contents of the ADM have been limited to preclude it from becoming too unwieldy, department heads are encouraged to submit their suggestions to the managing director if they determine that there is a need for inclusion of an additional subject.
- C. When a department head suggests a new subject for the ADM, it should be submitted through or to the managing director as a proposed mayor's directive with pages for the ADM attached (see preceding paragraph II. C.) or as additional pages for the ADM. A memorandum justifying the proposed additions should be used to transmit the suggestions.

#### **VI. AMENDING EXISTING GUIDANCE DOCUMENTS**

- A. When an existing document has to be changed, the Subject-Matter Expert (SME) department that has primary responsibility is expected to initiate the amendment. However, all department heads are encouraged to initiate changes whenever they become aware of such a need.
- B. A memorandum providing the rationale for an amendment to an existing directive should be sent to the managing director or through the managing director to the mayor if a mayor's directive should be changed. The proposed amendment should be prepared using the Ramseyer Method, in which changes are shown on the existing directive by bracketing material to be deleted and underscoring new material. Additionally, if the department submitting a proposed change was the agency that originated a reference to a mayor's directive, it must also prepare a new directive for the mayor's signature.